

**SIXTEENTH DAY**  
(Monday, August 5, 1991)

The Senate met at 11:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Thank You, Father, for another day in which there will be opportunities for work and service. We pray the hours will be used wisely.

Bless the efforts of this Senate as it begins its labors today and grant to these in places of authority wise and calculated counsel from above. Provide to them strength to stand steady as they confront the heavy and stressful issues. By their decisions may government in Texas be better and more equally applied to the governed. In Your name. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of Friday, August 2, 1991, was dispensed with and the Journal was approved.

**GUEST PRESENTED**

The President introduced to the Senate United States Congressman Greg Laughlin.

The Senate welcomed Congressman Laughlin.

**REPORT OF STANDING COMMITTEE**

Senator Montford submitted the following report for the Committee on Finance:

**C.S.S.B. 90**

**MESSAGE FROM THE HOUSE**

House Chamber  
August 5, 1991

HONORABLE BOB BULLOCK  
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

**H.B. 1**, General Appropriations Bill.

**H.C.R. 30**, In memory of Mariano Martinez, Sr.

Respectfully submitted,

BETTY MURRAY, Chief Clerk  
House of Representatives

**RESOLUTIONS SIGNED**

The President announced the signing in the presence of the Senate the following enrolled resolutions:

**S.C.R. 4**

**S.C.R. 5**

**S.C.R. 7**

**SENATE RESOLUTION 102**

Senator Parker offered the following resolution:

WHEREAS, Recognizing the outstanding accomplishments of our young citizens is one of the pleasurable tasks of the Senate of the State of Texas; and

WHEREAS, It is indeed an honor for the Texas Senate to congratulate Adam Vance for winning second place in the C.H.I.C.K.E.N. Club essay contest sponsored by the D.E.F.Y. Foundation; and

WHEREAS, This admirable organization provides opportunities for schoolchildren to develop leadership skills, take part in drug education and prevention programs, and choose positive alternatives to drug use; and

WHEREAS, Awarded a plaque at the Houston Astrodome at the April 13, 1991, baseball game between the Houston Astros and the San Francisco Giants, Adam was selected from 450 entries from 32 counties in the South East Texas District which encompasses all C.H.I.C.K.E.N. Clubs for his essay, "Why I Am a Winner without Drugs"; and

WHEREAS, It is a pleasure to commend such a courageous and self-disciplined young man; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, 1st Called Session, hereby applaud Adam Vance for his fine example and outstanding achievement; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Adam as an expression of esteem and appreciation from the Texas Senate.

**(Senator Truan in Chair)**

The resolution was read.

An enrolled copy of the resolution, previously adopted by the Senate on July 31, 1991, was presented to Adam Vance by the President.

**CAPITOL PHYSICIAN**

Senator Brooks was recognized and presented Dr. P. J. Mock of La Porte as the "Doctor for the Day."

The Senate welcomed Dr. Mock and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

**(President in Chair)**

**SENATE BILL AND RESOLUTIONS ON FIRST READING**

The following bill and resolutions were introduced, read first time and referred to the Committee indicated:

**S.J.R. 12** by Lyon

Jurisprudence

Proposing a constitutional amendment providing for the election of justices to the supreme court and judges to the court of criminal appeals from single-member districts.

**S.J.R. 13** by Lyon Jurisprudence  
Proposing a constitutional amendment requiring the legislature to provide for the election of justices to the courts of appeals from single-member districts.

**S.J.R. 14** by Lyon Jurisprudence  
Proposing a constitutional amendment requiring the legislature to provide for the election of certain district judges from single-member judicial divisions.

**S.J.R. 15** by Montford • Finance  
Proposing a constitutional amendment relating to the establishment of a state lottery.

**S.B. 94** by Ellis Criminal Justice  
Relating to the awarding of good conduct time and the paroling of persons convicted of certain crimes.

#### HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

**H.B. 1**, To Committee on Finance.

#### SENATE BILL 83 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

**S.B. 83**, Relating to the governing board and executive director of the Texas Department of Commerce and the community development block grant program.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

#### Committee Amendment

Amend **S.B. 83** on page 21, by deleting Section 29.

The committee amendment was read.

On motion of Senator Dickson and by unanimous consent, the committee amendment was Laid on Table.

Senator Glasgow offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **S.B. 83** by striking all below the enacting clause and substituting the following:

SECTION 1. Subdivision (1), Section 481.001, Government Code, is amended to read as follows:

(1) "Policy board" [~~"Board"~~] means the policy [governing] board to [of] the department.

SECTION 2. Section 481.004, Government Code, as amended by **H.B. 1029**, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 481.004. POLICY [~~GOVERNING~~] BOARD. (a) The policy [~~department is governed by a~~] board is composed of:

(1) six public members appointed by the governor with the advice and consent of the senate, which members shall be appointed to give geographical representation on the policy board to all regions of the state; and

(2) the following ex officio members:

(A) the chairperson of the State Job Training Coordinating Council and the chairperson shall in no event be permitted to claim or receive state per diem for service on the policy board;

(B) the presiding officer of the International Trade Commission; and

(C) the presiding officer of the Texas-Mexico Authority.

(b) Appointed members of the policy board serve for six-year terms with the terms ~~[term]~~ of two members ~~[one member]~~ expiring February 1 of each odd-numbered year. Ex officio members have the same powers and duties as appointed members.

(c) Appointments to the policy board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees [Before the board's first meeting after the regular appointment of a member, the governor shall select a presiding officer from the board's members].

SECTION 3. Subchapter A, Chapter 481, Government Code, is amended by adding Sections 481.0041 through 481.0044 to read as follows:

Sec. 481.0041. REMOVAL OF POLICY BOARD MEMBERS. (a) It is a ground for removal from the policy board if a member:

(1) violates a prohibition established by Section 481.0042;

(2) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(3) is absent from more than half of the regularly scheduled policy board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the policy board.

(b) The validity of an action of the policy board is not affected by the fact that it is taken when a ground for removal of a policy board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the policy board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Sec. 481.0042. CONFLICT OF INTEREST. (a) A member of the policy board or the executive director or employee of the department may not:

(1) be an officer, employee, or paid consultant of a business entity that contracts with the department;

(2) directly own, control, or have any interest in a business entity that contracts with the department; or

(3) accept or solicit any gift, favor, or service that would reasonably tend to influence the person in the discharge of official duties or that the person knows or should know is being offered with the intent to influence official conduct.

(b) An officer, employee, or paid consultant of a business entity or a trade association of business entities that contracts with the department may not be a member of the policy board or the executive director or employee of the department.

(c) A person who is the spouse of an officer, manager, or paid consultant of a business entity or a trade association of business entities that contracts with the department may not be a member of the policy board or the executive director or employee of the department.

(d) For the purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(e) A person may not be a member of the policy board or the executive director or employee of the department if the person is required to register as a lobbyist

under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a business entity that has an interest in a contract with the department or a profession related to the operation of the department.

Sec. 481.0043. OFFICERS; COMPENSATION; MEETINGS. (a) The governor designates the presiding officer of the policy board. The policy board shall elect from among its members an assistant presiding officer and a secretary.

(b) The policy board shall meet at least quarterly.

(c) A member of the policy board may not receive compensation for service on the policy board. A member is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the policy board.

(d) The policy board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the policy board and to speak on any issue under the jurisdiction of the policy board.

Sec. 481.0044. GENERAL POWERS AND DUTIES. (a) The policy board may adopt rules for its internal management and control.

(b) The policy board shall perform the duties assigned to the department under this chapter or other law.

(c) The policy board possesses the powers and shall perform the duties assigned by law to the department.

(d) The policy board shall report to the governor annually and to the legislature at each regular session on the department's activities. The policy board may make recommendations in those reports on matters under its jurisdiction.

SECTION 4. Section 481.005, Government Code, is amended to read as follows:

Sec. 481.005. EXECUTIVE DIRECTOR; POLICY BOARD DUTIES [STAFF]. (a) The governor [board] shall appoint the [employ an] executive director of the department with the advice and consent of the senate. The executive director serves a two-year term expiring February 1 of each odd-numbered year [who shall employ other employees necessary to carry out the board's duties].

(b) The executive director shall execute a bond payable to the state in an amount set by the members of the policy board conditioned on the faithful performance of the duties of the office. Premiums for the bond are payable from appropriations to the department. The executive director must have demonstrated executive and organizational ability.

(c) The executive director shall manage the affairs of the department. The executive director shall provide administrative support to the members of the policy board that is necessary for the performance of the functions of the members.

(d) The members of the policy board shall establish policy, adopt rules that the policy board may adopt under law, evaluate the implementation of new legislation that affects the department's duties, review and comment on the department's budget, prepare an annual report of the department's activities, conduct investigations and studies, and develop long-range plans for the future goals and needs of the department. The members of the policy board may not be involved in the daily operation of the department. Except for duties related to the approval and issuance of bonds by the department, the policy board may delegate to the executive director the duties of the policy board under this chapter and other law that are not covered by the description of the members' duties under this subsection.

SECTION 5. Subsection (a), Section 481.006, Government Code, is amended to read as follows:

(a) The executive director [board] shall establish the divisions within the department, which may include:

- (1) an administrative division;
- (2) a promotion and marketing division;
- (3) a research, planning, and data services division;
- (4) a domestic business development division;
- (5) an international business development division;
- (6) a job training division; and
- (7) a tourism division.

SECTION 6. Section 481.007, Government Code, as amended by H.B. 1029, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 481.007. ADVISORY BOARDS. The executive director or the policy board may appoint [create] advisory committees to assist the executive director or the policy board [boards as it considers necessary] in the performance of their duties. A member of an advisory committee appointed by the executive director or the policy board may not receive compensation for service on the advisory committee. A member appointed under this section is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses included in performing service as a member of the advisory committee.

SECTION 7. Subchapter A, Chapter 481, Government Code, is amended by adding Sections 481.010 through 481.012 to read as follows:

Sec. 481.010. PERSONNEL. (a) The executive director shall employ personnel necessary for the performance of department functions. In addition to other personnel, the executive director shall employ a human rights officer and an internal auditor. The internal auditor shall report directly to the governor.

(b) The executive director shall provide to policy board members and department employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The policy board and executive director shall jointly develop and implement policies that clearly define the respective responsibilities of the members of the policy board and the executive director and staff of the department in accordance with this chapter.

(d) The executive director or the executive director's designee shall develop an intraagency career ladder program. The program shall require intraagency postings of all non-entry-level positions concurrently with any public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the department work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underutilization.

(g) A policy statement prepared under Subsection (f) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(h) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (g). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 481.011. FISCAL REPORT. The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 481.012. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the department's procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve. If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's programs.

SECTION 8. Subsection (a), Section 481.021, Government Code, as amended by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The department may:

- (1) adopt and enforce rules necessary to carry out this chapter;
- (2) adopt and use an official seal;
- (3) accept gifts, grants, or loans from and contract with any entity;
- (4) sue and be sued;
- (5) acquire and convey property or an interest in property;
- (6) procure insurance and pay premiums on insurance of any type, in accounts, and from insurers as the department [board] considers necessary and advisable to accomplish any of the department's [its] purposes; and
- (7) exercise any other power necessary to carry out this chapter.

SECTION 9. Subsection (a), Section 481.024, Government Code, as amended by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The Texas Economic Development Corporation on behalf of the state shall carry out the public purposes of this chapter. The creation of the corporation does not limit or impair the rights, powers, and duties of the department provided by this chapter. The corporate existence of the Texas Economic Development Corporation begins on the issuance of a certificate of incorporation by the secretary of state. The members of the policy board serve ex officio as the board of directors of the corporation. The corporation has the powers and is subject to the limitations provided for the department by this chapter in carrying out the public purposes of this chapter. The corporation has the rights and powers of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) except to the extent inconsistent with this section. The corporation may contract with the department and with bond counsel, financial advisors, or underwriters as its board of directors considers necessary.

SECTION 10. Subsection (b), Section 481.044, Government Code, is amended to read as follows:

(b) The department has the powers that are necessary and convenient to accomplish the purposes of this subchapter, including the power to:

(1) borrow money and otherwise incur debt and to issue bonds, and provide for the rights of the owners of the bonds, in the manner and to the extent permitted by this chapter and the Texas Constitution and to purchase, hold, cancel, or resell or otherwise dispose of its bonds, subject to the restrictions in a resolution authorizing the issuance of its bonds;

(2) purchase, discount, sell, and negotiate with or without guaranty notes, bonds, debentures, and other evidences of indebtedness of export businesses or portions or portfolios of or participations in those evidences of indebtedness;

(3) sell securities as the department considers necessary and advisable to accomplish any of the purposes of this subchapter;

(4) procure and pay premiums on insurance of any type in amounts and from insurers that the department considers necessary and advisable to accomplish any of the purposes of this subchapter;

(5) provide financial counseling services to export businesses;

(6) make secured or unsecured loans for export businesses to provide financing or refinancing of the costs incurred in connection with the international export or preexport of Texas products authorized by this subchapter, including the refunding of outstanding obligations, mortgages, or advances issued for those purposes, and charge and collect, on terms and conditions that the policy board considers advisable and not in conflict with this subchapter, interest on those loans for loan payments;

(7) secure the payment by the state or the department on guarantees and pay claims from money in the department's funds under any guarantee or insurance program implemented by the department; and

(8) acquire, hold, invest, use, and dispose of the receipts, funds, and money, subject only to the Texas Constitution, this subchapter, and any covenants relating to the department's bonds in classes of investments that the policy board determines.

SECTION 11. Subsections (a) and (c), Section 481.048, Government Code, are amended to read as follows:

(a) The department by rule shall establish criteria for determining which export businesses may participate in programs established by the department. The rules must state that the department's policy is to provide programs for providing to export businesses financial assistance that:

(1) otherwise would not be made;

(2) the policy board considers to present a reasonable risk and have a sufficient likelihood of repayment; and

(3) will create or maintain employment in the state.

(c) Financial assistance under this subchapter must be approved by the policy board. The policy board may delegate that approval authority to the executive director.

SECTION 12. Subsections (a) and (b), Section 481.050, Government Code, are amended to read as follows:

(a) A member of the policy board, the executive director, or an agent or employee of the department, in the person's own name or in the name of a nominee, may not hold an ownership interest of more than the following amount in an association, trust, corporation, partnership, or other entity that is, in its own name or in the name of a nominee, a party to a contract or agreement under this subchapter on which the member of the policy board, executive director, agent, or employee may be called on to act or vote:



- (1) 7-1/2 percent of the fair market value of the entity; or
- (2) \$50,000.

(b) With respect to a direct or indirect interest, other than an interest prohibited by Subsection (a), in a contract or agreement under this subchapter on which the member of the policy board, executive director, agent, or employee may be called on to act or vote, the member of the policy board, executive director, agent, or employee shall disclose the interest to the secretary of the department before the department takes final action concerning the contract or agreement and shall disclose the nature and extent of the interest and the person's acquisition of it. The department shall publicly acknowledge this disclosure and enter it in its minutes. A member of the policy board, executive director, agent, or employee who holds such an interest may not be officially involved in regard to the contract or agreement, may not vote on a matter relating to the contract or agreement, and may not communicate with the executive director or other members, agents, or employees concerning the contract or agreement. Notwithstanding any other provision of law, a contract or agreement entered into in conformity with this subsection is not invalid because of an interest described by this subsection nor is a person who complies with this subsection guilty of an offense, and the person may not be removed from office or be subjected to other penalty because of the interest.

SECTION 13. Section 481.051, Government Code, is amended to read as follows:

Sec. 481.051. PERSONAL LIABILITY OF MEMBERS OR PERSONS ACTING ON BEHALF OF DEPARTMENT. (a) A member of the policy board, the executive director, or any other person acting on behalf of the department in executing a contract, commitment, or agreement under this subchapter is not personally liable on the contract, commitment, or agreement.

(b) A member of the policy board, the executive director, or any other person acting on behalf of the department is not personally liable for damage or injury resulting from the performance of duties under this subchapter.

SECTION 14. Subsection (b), Section 481.052, Government Code, is amended to read as follows:

(b) In the resolution authorizing the bonds the policy board [department] may provide for the bonds to:

- (1) be executed and delivered at any time as a single issue or from time to time as several issues;
- (2) be in any denomination and form, including registered uncertificated obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which the department shall provide for under a system of books and records maintained by a bank serving as trustee, paying agent, or bond registrar;
- (3) be of a tenor;
- (4) be in coupon or registered form;
- (5) be payable in installments and at a time or times not exceeding five years from their date;
- (6) be subject to terms of redemption;
- (7) be payable at a place or places;
- (8) bear no interest or bear interest at any rate or rates, fixed, variable, floating, or otherwise determined by the department or determined under a contractual arrangement approved by the policy board, except that the maximum net effective interest rate, computed in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), on the bonds may not exceed a rate equal to the maximum annual interest rate established for business loans of \$250,000 or more in this state, payable at the place or places and evidenced in the manner; and

(9) contain provisions not inconsistent with this subchapter.

SECTION 15. Subsection (a), Section 481.053, Government Code, is amended to read as follows:

(a) The bonds may be sold at public or private sale at a price and in a manner and from time to time as the policy board's resolutions authorizing issuance of the bonds provide.

SECTION 16. Subsection (b), Section 481.056, Government Code, is amended to read as follows:

(b) The department shall establish and maintain a separate fund into which the proceeds from the sale of the bonds shall be deposited. All other money received by the department under this subchapter, except money required to be deposited in the Texas exporters loan fund, shall also be deposited in this fund. The policy board may provide for the establishment and maintenance of separate accounts within the fund, including interest and sinking accounts, reserve accounts, program accounts, and other accounts, all of which shall be kept and held in escrow and in trust by the state treasurer for and on behalf of the department and the owners of the bonds as funds outside the treasury under Section 404.073 and may be used only as provided by this subchapter. Pending use, the state treasurer may invest and reinvest the money in the fund in investments authorized by law for state funds that the state treasurer, with the approval of the policy board and consistent with [its] resolutions authorizing the bonds, considers appropriate. Earnings on those investments shall be deposited in the fund. The department is authorized to use money deposited in the fund for the purposes specified in and according to the procedures established by this subchapter, and the state may not take any action with respect to the fund other than as specified by this subchapter and in the resolutions of the policy board.

SECTION 17. Subsection (b), Section 481.073, Government Code, is amended to read as follows:

(b) The policy board has the powers that are necessary to accomplish the purposes of this subchapter, including the powers granted to industrial development corporations by Section 23 of the Development Corporation Act, except those provided by Subsections (a)(7), (8), (9), and (10) of that section, and Sections 26, 27, and 29 of that Act.

SECTION 18. Subsection (a), Section 481.075, Government Code, is amended to read as follows:

(a) The department shall adopt rules to establish criteria for determining which users may participate in programs established by the department under this subchapter. The department shall adopt collateral or security requirements to ensure the full repayment of any loan, lease, or installment sale and the solvency of any program implemented under this subchapter. The policy board must approve all leases and sale and loan agreements made under this subchapter except that the policy board may delegate this approval authority to the executive director.

SECTION 19. Subsection (a), Section 481.222, Government Code, as amended by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) The Texas product development fund is a revolving fund in the state treasury. The fund consists of money appropriated to the department, interest paid on money in the fund, proceeds of bonds issued under this chapter, application fees, loan repayments, guarantee fees, royalty receipts, dividend income, and other amounts received by the state from loans, loan guarantees, and equity investments made under this subchapter, other amounts received by the state for loans or grants made under this subchapter, and money acquired from federal grants or other sources. The fund contains a program account, an interest and sinking account, and other accounts that the policy board authorizes to be created and maintained. Money in the fund is available for use by the department under this subchapter.

SECTION 20. Sections 481.226(a)-(d), Government Code, are amended to read as follows:

(a) The policy board may issue up to \$25 million of general obligation bonds and may use the proceeds of the bonds to provide venture financing under this subchapter. The policy board shall deposit the proceeds of the bonds in the Texas product development fund and apply them in accordance with the resolution authorizing the bonds. The fund and any accounts established in the fund shall be held in trust by the state treasurer for and on behalf of the department and the owners of the general obligation bonds issued in accordance with this section, and may be used only as provided by this section. Pending use, the treasurer may invest and reinvest money in the fund in investments authorized by law for state funds that the treasurer, consistent with the policy board's resolutions authorizing the bonds, considers appropriate. Repayments of financial assistance provided under this subchapter, together with earnings received on investments of the product development funds, shall be deposited first, in the interest and sinking account as prescribed by the policy board's resolutions authorizing bonds under this subchapter and second, in any reserve account established by the policy board until that account is fully funded as prescribed by the policy board's resolutions. If, during the time any general obligation bonds are payable from the interest and sinking account, the policy board determines that there will not be sufficient money in the interest and sinking account during the following fiscal year to pay the principal of or interest on the general obligation bonds or both the principal and interest that are to come due during the following fiscal year, the comptroller of public accounts shall transfer to the fund the first money coming into the state treasury not otherwise appropriated by the constitution in an amount sufficient to pay the obligations.

(b) The bonds may be issued from time to time in one or more series or issues, in bearer, registered, or any other form, which may include registered uncertificated obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be provided for by the policy board under a system of books and records maintained by the department or by an agent appointed by the policy board in a resolution providing for issuance of its bonds. Bonds may mature serially or otherwise not more than 40 years from their date. Bonds may bear no interest or may bear interest at any rate or rates, fixed, variable, floating, or otherwise, determined by the policy board or determined pursuant to any contractual arrangements approved by the policy board, not to exceed the maximum net effective interest rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). Interest on the bonds may be payable at any time and the rate of interest on the bonds may be adjusted at any time determined by the policy board pursuant to the resolutions authorizing the bonds or determined pursuant to any contractual arrangement approved by the policy board. In connection with the issuance of its bonds, the policy board may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), to the extent not inconsistent with this section. The bonds may be issued in the form and denominations and executed in the manner and under the terms, conditions, and details determined by the policy board in the resolution authorizing their issuance. If any officer whose manual or facsimile signature appears on the bonds ceases to be an officer, the signature remains valid and sufficient for all purposes as if the officer had remained in office.

(c) All bonds issued by the policy board under this section are subject to review and approval by the attorney general in the same manner and with the same effect as is provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(d) The bonds are a legal and authorized investment for a bank, trust company, savings and loan association, insurance company, fiduciary, trustee, or guardian or a sinking fund of a municipality, county, school district, or political subdivision of the state. The bonds may secure deposits of public funds of the state, a municipality, a county, a school district, or another political corporation or subdivision of the state. The policy board may issue bonds to refund all or part of its outstanding bonds, including accrued but unpaid interest. The bonds, a transaction relating to the bonds, or a profit made in the sale of the bonds is exempt from taxation by the state, an agency or subdivision of the state, a municipality, or a special district.

SECTION 21. Subsection (f), Section 481.230, Government Code, as added by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(f) The executive director, a [A] member of the policy board, advisory board, or other person acting on behalf of the department in executing a contract, commitment, or agreement under this subchapter is not personally liable on the contract, commitment, or agreement. The executive director, a [A] member of the policy board, advisory board, or other person acting on behalf of the department is not personally liable for damage or injury resulting from the performance of duties under this subchapter.

SECTION 22. Subsection (e), Section 481.238, Government Code, is amended to read as follows:

(e) The policy board shall determine the rate of interest on loans made under this subchapter. Payment of interest and principal on a loan may be deferred at the discretion of the department.

SECTION 23. Subsections (a) through (c), Section 481.244, Government Code, are amended to read as follows:

(a) The policy board may issue up to \$20 million of general obligation bonds and may use the proceeds, less the costs of issuance of the bonds, to carry out the small business incubator program in accordance with the resolution authorizing the bonds. The policy board shall deposit the proceeds of the bonds in the small business incubator fund and apply them in accordance with the resolution authorizing the bonds. The fund and any accounts established in the fund shall be held in trust by the state treasurer for and on behalf of the department and the owners of the general obligation bonds issued in accordance with this section, and may be used only as provided by this subchapter. Pending use, the treasurer may invest and reinvest money in the fund in investments authorized by law for state funds that the treasurer, consistent with the policy board's resolutions authorizing the bonds, considers appropriate. Repayments of financial assistance provided under this subchapter, together with earnings received on investments of the fund, shall be deposited first, in the interest and sinking account as prescribed by the policy board's resolutions authorizing bonds under this article and second, in any reserve account established by the policy board until that account is fully funded as prescribed by the policy board's resolutions. If, during the time any general obligation bonds are payable from the interest and sinking account, the policy board determines that there will not be sufficient money in the interest and sinking account during the following fiscal year to pay the principal of or interest on the general obligation bonds or both the principal and interest that are to come due during the following fiscal year, the comptroller of public accounts shall transfer to the fund the first money coming into the state treasury not otherwise appropriated by the constitution in an amount sufficient to pay the obligations.

(b) The bonds may be issued from time to time in one or more series or issues, in bearer, registered, or any other form, which may include registered uncertificated obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be

provided for by the policy board under a system of books and records maintained by the department or by an agent appointed by the policy board in a resolution providing for issuance of its bonds. Bonds may mature serially or otherwise not more than 40 years from their date. Bonds may bear no interest or may bear interest at any rate or rates, fixed, variable, floating, or otherwise, determined by the policy board or determined pursuant to any contractual arrangements approved by the policy board, not to exceed the maximum net effective interest rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). Interest on the bonds may be payable at any time and the rate of interest on the bonds may be adjusted at any time determined by the policy board pursuant to the resolutions authorizing the bonds or determined pursuant to any contractual arrangement approved by the policy board. In connection with the issuance of its bonds, the policy board may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), to the extent not inconsistent with this section. The bonds may be issued in the form and denominations and executed in the manner and under the terms, conditions, and details determined by the policy board in the resolution authorizing their issuance. If any officer whose manual or facsimile signature appears on the bonds ceases to be an officer, the signature remains valid and sufficient for all purposes as if the officer had remained in office.

(c) All bonds issued by the policy board under this section are subject to review and approval by the attorney general in the same manner and with the same effect as is provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

SECTION 24. Section 481.292, Government Code, is amended to read as follows:

Sec. 481.292. ADMINISTRATION. The department [~~Office of Advanced Technology~~] shall implement this subchapter [~~as directed by the board~~].

SECTION 25. Subsection (e), Section 481.297, Government Code, as added by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(e) A member of the policy board, advisory board, or other person acting on behalf of the department in executing a contract, commitment, or agreement under this subchapter is not personally liable on the contract, commitment, or agreement.

SECTION 26. Section 481.309, Government Code, is amended to read as follows:

Sec. 481.309. ADMINISTRATION. The department [~~Office of Advanced Technology~~] shall implement this subchapter [~~as directed by the board~~].

SECTION 27. Article 4413(501), Revised Statutes, as added by S.B. 546, Acts of the 72nd Legislature, Regular Session, 1991, is amended by adding Sections 2.06, 2.07, 2.08, 2.09, and 2.10 to read as follows:

Sec. 2.06. ADMINISTRATION OF COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM. The department, through the community affairs division, shall, under the federal Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35) and 24 CFR, Part 570, Subpart I, administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.).

Sec. 2.07. ALLOCATION RULES. Community development block grant program funds shall be allocated to eligible counties and municipalities according to department rules.

Sec. 2.08. ALLOCATION SHARING. The department may enter into interagency agreements with the Texas Department of Commerce to transfer not

more than 20 percent of the federal funds received by the department to the Texas Department of Commerce to be used for economic development. The federal funds transferred to the department of commerce include the amount of federal funds to be used for administrative expenses in accordance with federal law. Any income generated from the economic development programs of the department of commerce remain with that agency. The use of funds transferred to the Texas Department of Commerce under this section must be approved by the department, and all rules of the Texas Department of Commerce relating to the funds transferred under this section must be approved by the department.

Sec. 2.09. UNUSED FEDERAL FUNDS. Any federal funds transferred under Section 2.08 of this article to the Texas Department of Commerce that are not used on a timely basis, as specified by federal guidelines, shall be returned to the department under the terms of an interagency agreement.

Sec. 2.10. STATE COMMUNITY DEVELOPMENT REVIEW COMMITTEE. (a) The state community development review committee consists of 12 members, appointed by the governor, each of whom must be a member of the governing body of a county or municipality eligible for funding under the program or a supervisory-level county or municipal employee whose regular duties include involvement in community development activities. The number of county officials on the committee, expressed as a ratio of all committee members, may not exceed the number of counties eligible for funding under the community development block grant program, expressed as a ratio of all eligible applicants.

(b) The chairman of the committee shall be designated by the governor and serve at the governor's pleasure.

(c) Members of the committee serve two-year terms expiring February 1 of each odd-numbered year. If a vacancy occurs on the committee, the governor shall appoint a new member to fill the remaining portion of the unexpired term.

(d) Committee members serve without compensation for services on the committee but are entitled to be reimbursed for reasonable and necessary expenses incurred in performing their duties. Service on the committee by officers and employees of counties and municipalities is considered as an additional duty of their office or employment and may not be construed as dual officeholding.

(e) The committee shall meet at least twice annually at the call of the director.

(f) The committee shall:

(1) consult with and advise the director on the administration and enforcement of the program; and

(2) review applications submitted by counties and municipalities eligible for funding under the program and advise and assist the director with respect to the allocation of program funds to those applicants.

(g) The committee may recommend annually to the director a formula for allocation of funds to each geographic state planning region established by the governor as provided by Chapter 391, Local Government Code. The formula must give preference to regions according to the regions' needs.

SECTION 28. Subsection (a), Section 3, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), is amended to read as follows:

(a) It is a goal of this state to assist its citizens in obtaining gainful employment and in reducing dependency on public assistance and unemployment compensation by:

(1) preparing young people and unskilled adults who are economically disadvantaged for entry into the work force;

(2) assisting citizens faced with serious barriers to employment to overcome those barriers, including age, handicapped status, lack of education, and locality;

(3) taking an affirmative role in ensuring the maximum utilization of available resources in planning, implementing, and facilitating this Act through a

partnership of individuals from the various diverse communities of the state, including but not limited to representatives of business communities, local and state government, ethnic communities, education communities, and the various cultural and socio-economic communities, to participate in decision-making and policy-making activities associated with programs created under this Act; and

(4) retraining individuals whose current skills are no longer in demand in the labor market or who have been laid off from full-time employment, and who must upgrade their work skills to return to the work force.

SECTION 29. Subsection (b), Section 8, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The state hereby establishes a State Job Training Coordinating Council as required by the federal Act, hereinafter referred to as the "state council". The state council shall:

(1) be appointed by the governor in accordance with the requirements of the federal Act;

(2) have not more than 40 members including the chairperson;

(3) meet not less than quarterly;

(4) develop and recommend statewide goals and program objectives;

(5) identify needs for training and employment services;

(6) review operations of local programs and state agencies providing job-training, employment, and related programs identified in the federal Act;

(7) establish criteria for coordinating program planning and operations;

(8) evaluate the results of state and local training and employment services;

(9) develop and recommend the state's coordination and special services plan to the governor;

(10) perform the functions formerly conducted by the State Coordinating Committee for the work incentive program under Title IV of the Social Security Act, the advisory council established under the Wagner-Peyser Act (29 U.S.C. 49) and under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes);

(11) assist each Private Industry Council in developing programs to serve AFDC recipients; [and]

(12) develop conflict-of-interest guidelines relating to the participation of a member of a Private Industry Council in a contract with the service delivery area administered by that Private Industry Council; and

(13) perform such functions and duties relating to job-training, employment, and related programs as required by the federal Act or as assigned by the governor.

SECTION 30. Subsections (a) and (b), Section 9A, Texas Job-Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Texas Department of Commerce is authorized to enter into contracts with public community and junior colleges and private, nonprofit organizations that conduct model or exemplary youth programs that meet the unique educational needs of student dropouts to provide educational services to student dropouts. A contract under this section must be made in accordance with the same procedure by which a state agency contracts with a private consultant under Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes).

(b) A contract under this section must be structured to encourage partnerships among the public school districts, public community and junior colleges, private

industry councils, and private, nonprofit organizations described in Subsection (a) of this section.

SECTION 31. Section 1, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended by adding Subdivision (19) to read as follows:

(19) "Qualified residential rental project issue" means an issue of bonds for a qualified residential rental project, as that term is defined under Section 142(d) of the code.

SECTION 32. Subsections (b) and (e), Section 2, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), as amended by S.B. 546, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(b) Prior to September 1, (1) 28 [33] percent of the state ceiling is available exclusively for reservations by issuers of qualified mortgage bonds, (2) 17.5 [15] percent of the state ceiling is available exclusively for reservations by issuers of state-voted issues, (3) 7.5 [10] percent of the state ceiling is available exclusively for reservations by issuers of qualified small issue bonds, [and] (4) five percent of the state ceiling is available exclusively for reservations by issuers of qualified residential rental project issues; and (5) 42 percent [the balance] of the state ceiling is available exclusively for reservations by all other issuers of bonds requiring an allocation.

(e) Notwithstanding the provisions of [Except as provided in] Subsection (f) of this section, if qualified mortgage bonds or qualified small issue bonds no longer qualify for treatment as tax-exempt obligations under the provisions of the code, then the provisions of Subsection [Subsections] (b)(1) or [and] (3) of this section, or both, as applicable, shall be null and void, and the portion of the state ceiling that is available exclusively for reservations by issuers of qualified mortgage bonds or qualified small issue bonds, or both, as applicable, shall be reallocated proportionately by March 1 for reservations by each other category of issuers under Subsection (b) of this section.

SECTION 33. Subsection (c), Section 3, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), as amended by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(c) The board shall not grant a reservation of a portion of the state ceiling to any issuer prior to January 10. If two or more issuers apply for a reservation of state ceiling in a category described in Subsections (b)(2), (b)(3), [and] (b)(4), and (b)(5) of Section 2 of this Act on or before January 10, reservations within that category shall be granted from the state ceiling available in that category in an order determined by the board by lot. If two or more housing finance corporations apply for a reservation of state ceiling in the category described by Section 2(b)(1) of this Act on or before January 10, reservations within that category shall be granted from the state ceiling available in that category according to the following categories of priority: (1) the first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year; (2) the second category of priority shall include those applications for a reservation filed by housing finance corporations to which state ceiling could not be made available by August 31 for that calendar year because of the application of Section 4(b) of this Act; (3) the third category of priority shall include those applications for a reservation not included in the first and second categories of priority; and (4) within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a



reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. All applications for a reservation filed after January 10 by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.

SECTION 34. Section 3, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), is amended by adding Subsections (e) and (f) to read as follows:

(e) If any portion of state ceiling in any category described in Section 2(b) of this Act from which issuers were granted reservations becomes available in that category before June 1, those amounts shall be aggregated and reservations shall be granted from that category on June 1. If any portion of state ceiling from which issuers were granted reservations becomes available in that category after June 1 and before August 25, those amounts shall be aggregated and reservations shall be granted from that category on August 25. The department may also grant a reservation to an issuer at any time on or after January 10 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category.

(f) An issuer may refuse to accept a reservation if the amount of state ceiling available is less than the amount for which the issuer applied under Section 4 of this Act. The amount of available state ceiling is subject to the grant of a reservation to each succeeding issuer eligible to receive a reservation of that available state ceiling in the order of priority determined in accordance with this Act. An issuer's refusal to accept a reservation does not affect the issuer's order of priority determined in accordance with this Act for a subsequent receipt of a reservation.

SECTION 35. Subsections (a), (d), and (e), Section 7, Chapter 1092, Acts of the 70th Legislature, Regular Session, 1987 (Article 5190.9a, Vernon's Texas Civil Statutes), as amended by S.B. 1070, Acts of the 72nd Legislature, Regular Session, 1991, are amended to read as follows:

(a) Except as provided in Subsection (b) of this section, the issuer shall close on the bonds for which a reservation has been granted not later than the 90th [60th] day after the reservation date. [The 60-day period may be extended by 15 days if, before the end of the 60-day period, the issuer submits to the board a written request for the extension. The request must state the specific deadline requested. The board may approve the request if it considers the requested deadline appropriate.]

(d) Not later than the fifth day after the day on which the bonds are closed, the issuer shall submit to the board:

(1) [the remaining closing fee, based on the principal amount of the bonds certified as provided by Section 6(a)(2) of this Act;

[(2)] a written notice stating the delivery date of the bonds and the principal amount of the bonds issued; and

(2) [(3)] a certified copy of the document authorizing the bonds and other documents relating to the issuance of the bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or formula by which the interest rate is calculated;

(C) maturity schedule; and

(D) purchaser or purchasers.

(e) The board shall adopt rules that require the payment of closing fees simultaneously with the closing on the bonds. [On failure of the issuer to submit the documents and fee described by Subsection (d) of this section before this deadline, the issuer's reservation is canceled;]

SECTION 36. Subchapter N, Chapter 481, Government Code, is repealed.

SECTION 37. (a) Sections 2.06, 2.07, 2.08, 2.09, and 2.10, Article 4413(501), Revised Statutes, as added by this Act, take effect January 1, 1992, and on that date the powers, duties, and obligations of the Texas Department of Commerce relating to the community development block grant program are transferred to the Texas Department of Housing and Community Affairs. On January 1, 1992, the Texas Department of Commerce shall transfer all property of the department relating to the powers, duties, and obligations being transferred and all records relating to the powers, duties, and obligations being transferred in its custody to the Texas Department of Housing and Community Affairs.

(b) On the transfer of all property and records under Subsection (a) of this section:

(1) a rule, form, or policy adopted by the Texas Department of Commerce relating to the powers, duties, and obligations being transferred becomes a rule, form, or policy of the Texas Department of Housing and Community Affairs; and

(2) a contract made by the Texas Department of Commerce relating to the powers, duties, and obligations being transferred becomes a contract made by the Texas Department of Housing and Community Affairs.

(c) On January 1, 1992, all funds appropriated to the Texas Department of Commerce for the powers, duties, and obligations related to the community development block grant program are transferred to the Texas Department of Housing and Community Affairs.

(d) On January 1, 1992, all personnel employed by the Texas Department of Commerce for the administration of the powers, duties, and obligations related to the community development block grant program are transferred to the Texas Department of Housing and Community Affairs.

(e) On January 1, 1992, the state community development review committee established by Section 481.193, Government Code, repealed by this Act, shall transfer all property and records in its custody to the state community development review committee created by Section 2.10, Article 4413(501), Revised Statutes, as added by this Act, and on that transfer the state community development review committee established by Section 481.193, Government Code, is abolished.

SECTION 38. On January 1, 1992, the powers, duties, and obligations of the governing board of the Texas Department of Commerce are transferred to the executive director of the Texas Department of Commerce and the policy board to the Texas Department of Commerce as provided by this Act, and a rule, form, or policy adopted by the board becomes a rule, form, or policy of the executive director or policy board, as appropriate. On the transfer of powers, duties, and obligations, the governing board of the Texas Department of Commerce is abolished.

SECTION 39. Members of the governing board of the Texas Department of Commerce, as it existed before the effective date of this Act, shall continue to serve as members of the policy board until their terms as members of the governing board of the Texas Department of Commerce would have expired.

SECTION 40. (a) The governor shall make the initial appointment of the executive director of the Texas Department of Commerce on or before January 1, 1992.

(b) The initial term of the executive director expires on February 1, 1993. On expiration of that term, the term of the executive director is two years, as provided by Section 481.005, Government Code, as amended by this Act.

SECTION 41. The term of office of each member currently serving on an advisory board created under Section 481.007, Government Code, as amended by H.B. 1029, Acts of the 72nd Legislature, Regular Session, 1991, continues until the current term expires.

SECTION 42. (a) Except as provided in Subsection (b) of this section, this Act takes effect September 1, 1991.

(b) Sections 33 through 35 take effect January 1, 1992.

SECTION 43. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

Senator Whitmire offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 to **S.B. 83** by adding a new SECTION 19 and renumbering subsequent sections accordingly.

SECTION 19. Section 481.076 (c)(4), Government Code, is amended by adding a new subsection (c)(4) and renumbering subsequent subsections.

(c)(4) provide skill upgrades in conjunction with public or private employers for currently employed workforce that are necessary for them to retain their jobs.

The amendment to the amendment was read and was adopted by a viva voce vote.

Senator Brown offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 3**

Amend Floor Amendment No. 1 to **S.B. 83**, SECTION 4, Sec. 481.005, (page 4, lines 28-30 of floor substitute) by striking all of Subsection (a) and substituting the following in place thereof:

(a) The board shall appoint the executive director of the department.

The amendment to the amendment was read.

On motion of Senator Glasgow, Floor Amendment No. 3 was tabled by the following vote: Yeas 23, Nays 7.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Carriker, Dickson, Ellis, Glasgow, Haley, Johnson, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Tejada, Truan, Turner, Whitmire, Zaffirini.

Nays: Brown, Harris of Tarrant, Harris of Dallas, Henderson, Krier, Leedom, Sims.

Absent: Green.

Question recurring on adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment by a viva voce vote.

**RECORD OF VOTES**

Senators Brown and Henderson asked to be recorded as voting "Nay" on the passage of the bill to engrossment.

**SENATE BILL 83 ON THIRD READING**

Senator Glasgow moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 83** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

The bill was read third time and was passed by a viva voce vote.

**RECORD OF VOTE**

Senator Henderson asked to be recorded as voting "Nay" on the final passage of the bill.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 6 ON SECOND READING**

On motion of Senator Harris of Dallas and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

**C.S.H.B. 6**, Relating to the regulation of insurance, the powers and duties of the Texas Department of Insurance, and maintaining motor vehicle financial responsibility.

The bill was read second time.

(Senator Armbrister in Chair)

Senator Harris of Dallas offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **C.S.H.B. 6** as follows by striking SECTION 7.02 of the bill, relating to the application of the amendment to Section 5, Article 21.55, Insurance Code, and substitute the following:

SECTION 7.02. (a) This article takes effect September 1, 1991.

(b) Section 5, Article 21.55, Insurance Code, as amended by this article, applies to each claim filed with an insurer on or after September 1, 1991. A claim filed before that date is governed by the law in effect on the date that the claim is filed, and the former law is continued in effect for that purpose.

The amendment was read and was adopted by a viva voce vote.

(President in Chair)

Senator Harris of Dallas offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **C.S.H.B. 6** as follows:

In Section 14.01, strike Subsection (e) and insert the following:

(e) A loan or advance made under this article, and any interest accruing on the loan or advance, is not a legal or financial liability of the insurer until the commissioner authorizes repayment or payment under Subsection (d) of this article. Until the commissioner authorizes the repayment or payment, all financial statements published by the insurer or filed with the commissioner must show as a liability that portion of the insurer's surplus that exceeds the minimum surplus as defined in the subordinated agreement to the extent of the unpaid balance thereon, and must show the amount of such minimum surplus as a special surplus account.

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend C.S.H.B. 6 by inserting the following new section and renumbering subsequent sections:

SECTION 7.01. Section 4, Article 21.55, Insurance Code, as added by Section 11.03, Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991 is amended to read as follows:

Sec. 4. PAYMENT OF CLAIMS. If an insurer notifies a claimant that the insurer will pay a claim or part of a claim under Section 3 of this article, the insurer shall pay the claim not later than the fifth business day after the notice has been made. If payment of the claim or part of the claim is conditioned on the performance of an act by the claimant, the insurer shall pay the claim not later than the fifth business day after the date the act is performed. Surplus lines insurers shall pay the claim not later than the twentieth business day after the notice or date the act is performed.

The amendment was read and was adopted by a viva voce vote.

Senator Harris of Dallas offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend C.S.H.B. 6 by striking Article 1 of the bill and substituting the following:

**ARTICLE 1. GUARANTY FUNDS AND LIQUIDATION OF INSURERS**

SECTION 1.01. Section 1, Article 21.28, Insurance Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) "Liquidator" means "receiver." The term includes the commissioner of insurance or the person designated by the commissioner of insurance to act as special deputy receiver [State Board of Insurance as liquidator].

(g) "Person" means an individual, association, corporation, partnership, or other private legal entity.

SECTION 1.02. Sections 2(a), (d), and (h), Article 21.28, Insurance Code, are amended to read as follows:

(a) Receiver Taking Charge. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the commissioner of insurance or a person designated by the commissioner under contract [liquidator designated by the State Board of Insurance as hereinafter provided for] shall act as [be such] receiver. The [liquidator so appointed] receiver shall forthwith take possession of the assets of such insurer and deal with the same in the person's [his] own name as receiver or in the name of the insurer as the court may direct. The receiver has the powers specified in this code. A person designated by the commissioner to act as special deputy receiver under contract is subject to the performance standards imposed by this subsection. The special deputy receiver shall submit monthly written reports to the court and commissioner that state the special deputy receiver's business plan for the receivership, including expenses incurred in administering the receivership during the preceding month and an estimate of those expenses for the succeeding month. The report must include a cost-benefit analysis on the expenditure of funds other than funds spent for the payment of claims. The business plan report must include a budget of monthly expenses that explains any variation from the original projection. In addition to the business plan report, the special deputy receiver shall

submit a monthly report to the commissioner relating to the special deputy receiver's activities in administering the receivership. The special deputy receiver must submit to performance audits and financial audits on a semiannual basis until January 1, 1994, and subsequently on an annual basis or more frequently as directed by the commissioner.

(d) Bonds. The receiver shall be responsible~~[-on his official bond hereinafter provided for;]~~ for all assets coming into his possession. The court may require a [an additional] bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy receiver [liquidator], or other assistant or employee appointed by or under the authority of this Article.

(h) Depositories. Except as provided by this subsection, all [All] money collected by the receiver shall be forthwith deposited into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The receiver may deposit the money in any bank, banks, or savings and loan association or associations in this State insured by a federal agency that provides for deposit insurance if the receiver, in the exercise of sound financial judgment, determines that it would be advantageous to do so [which are members of the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation]. The funds collected or realized from the assets of each insurer for which the receiver has been appointed shall be accounted for by the receiver separately [kept separate and apart] from all other funds. Whenever any account in a [any such] bank or savings and loan association exceeds the maximum amount insured by the appropriate federal agency [said Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation], the receiver is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit without [upon] approval of the court.

SECTION 1.03. Section 3, Article 21.28, Insurance Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding any other provision of this article, if a claim is covered by a guaranty fund created under Article 9.48, 21.28-C, or 21.28-D of this code, the receiver shall refer the claim to the appropriate guaranty association for processing.

SECTION 1.04. Section 8A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 8A. SETTLEMENT OF CLAIMS; ABANDONED FUNDS; RE-OPENING OF RECEIVERSHIPS. Any and all assets other than cash remaining in the receiver's hands after payment of the final dividend may be conveyed, transferred or assigned to the commissioner ~~[State Insurance Liquidator and his successors in office;]~~ to be handled as a trust. The commissioner ~~[State Insurance Liquidator]~~ shall have authority to convey, transfer, and assign any assets, including causes of action, judgments, and claims, and to settle or release causes of action, judgments, claims, and liens on such terms and for such amounts as he deems for the best interest of such trust, whether such assets have heretofore or may hereafter come into his hands. From proceeds derived from any such assets the commissioner or the special deputy receiver [Liquidator] shall defray the costs incident to the sale, settlement, release or other transaction whereby such proceeds are obtained, and deliver the remainder to the Board to be deposited by it in trust in a special account to be maintained with the State Treasurer to be handled, disposed of and used as follows:

An order directing disposition of such funds may be made by a court of competent jurisdiction of Travis County, Texas, upon application of the commissioner ~~[Liquidator]~~, after notice and hearing. Notice shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had

on the commissioner's [Liquidator's] application, and notice shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in Travis County. Such notice shall state the amount of the funds and the receivership from which they were derived. It shall be addressed to all persons having an interest, as claimant or otherwise, in the assets of the particular receivership involved in the application, and shall state generally that a hearing shall be had on the date specified for the purpose of determining the disposition to be made of such funds, including a declaration that such funds are abandoned and the property of the State Board of Insurance.

If the court finds that funds derived from any receivership are sufficient to justify re-opening of the receivership and payment of a dividend, then such may be ordered, but otherwise, if such funds are insufficient for that purpose, the court may declare such funds abandoned and a certified copy of such judgment will be authority for the Comptroller of Public Accounts to issue a Warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that funds derived from one insurer need not be kept separate from funds derived through any other insurer.

Such funds may be used as provided in Section 8(j) of this Article.

SECTION 1.05. Section 9(c), Article 21.28, Insurance Code, is amended to read as follows:

(c) [~~No~~] Limitation. Except as otherwise provided by this subsection, each [~~Each~~] receivership or other delinquency proceeding prescribed by this Article shall be administered in accordance with Section 64.072, Civil Practice and Remedies Code. To the extent a receivership or delinquency proceeding initiated against an insurer applies to claims against a workers' compensation insurance policy or a title insurance policy, the receivership or delinquency proceeding shall be administered continuously [hereunder] for whatever length of time is necessary to effectuate its purposes, and no[~~-No~~] arbitrary period prescribed elsewhere by the laws of Texas limiting the time for the administration of receiverships or of corporate affairs generally shall be applicable thereto.

SECTION 1.06. Sections 11(a) and (b), Article 21.28, Insurance Code, are amended to read as follows:

(a) Records Admitted. All books, records, documents and papers of any delinquent insurer received by the receiver [liquidator] and held [~~by him~~] in the course of the delinquency proceedings, or certified copies thereof, under the hand and official seal of the Board and/or receiver [liquidator], shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Board and/or receiver [liquidator] that the same was received from the custody of the delinquent insurer or found among its effects.

(b) Certificates. The receiver [liquidator] shall have the authority to certify to the correctness of any paper, document or record of the receiver's [his] office, including those described in (a) of this section, and to make certificates under seal of the Board and certified by the receiver [liquidator] certifying to any fact contained in the papers, documents or records of the Texas Department [Liquidation Division of the State Board] of Insurance; and the same shall be received in evidence in all cases in which the originals would be evidence.

SECTION 1.07. Section 12, Article 21.28, Insurance Code, as amended by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, is amended by amending Subsections (a), (b), and (c) and adding Subsection (h) to read as follows:

(a) Special Deputy Receiver [Liquidator], Bond. A special deputy receiver appointed by the commissioner under this article shall file with the commissioner a bond in an amount established by the commissioner, payable to the commissioner for the benefit of injured parties, and conditioned on the faithful performance of

the special deputy receiver's duties and the proper accounting for all moneys and properties received or administered by the special deputy receiver. [The liquidator herein named shall be appointed by the State Board of Insurance, and shall be subject to removal by said Board, and before entering upon the duties of said office, shall file with the Board a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board for the benefit of injured parties, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.]

(b) Appointments, Expenses. The commissioner may appoint, set the compensation of, and contract with one or more qualified special deputy receivers to act for the commissioner under this code. In making an appointment under this section, the commissioner shall attempt to reflect the ethnic, racial, and geographic diversity of the state. A special deputy receiver has all the powers of the receiver granted by this code, unless limited by the commissioner. [The Board shall have the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary:] The payment of such compensation and all expenses of liquidation shall be made by the commissioner [liquidator] out of funds or assets of the insurer [on approval of the Board]. An itemized report of such expenses, sworn to by the commissioner or a special deputy receiver [liquidator and approved by the Board], shall be presented on a monthly basis to the court [from time to time], which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

(c) Filing Reports. The receiver [Said liquidator] shall file reports with the Board upon its request showing the operation, receipts, expenditures, and general condition of any organization of which the receiver [he] may have charge at that time, and, upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. The receiver [He] shall also file a final report of each organization which [he] has been liquidated or handled showing all receipts and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

(h) A special deputy receiver appointed by the commissioner serves at the pleasure of the commissioner. Unless restricted by the commissioner, a special deputy receiver may perform any act on behalf of the commissioner. If expressly authorized by the commissioner, a special deputy receiver may employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the special deputy receiver considers necessary to assist in the performance of the receiver's duties. The expenses of employing those persons are expenses of the receivership payable out of funds or assets of the insurer.

SECTION 1.08. Section 12A(a), Article 21.28, Insurance Code, as amended by Section 23, Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) It is the sense of the Legislature, as necessary to state policy, that facilities be immediately and continually available to meet any or all of the requirements of preparing for, placing in, continuing or completing any liquidation, rehabilitation, reorganization or conservation of insurers, and in order to make such provision and to provide that the Liquidator and employees be used for other Insurance Department duties when not involved in liquidation or conservation matters, the Legislature may make provisions for the Liquidator and employees and their expenses, in whole or in part, by making appropriations therefor, or by



appropriating or permitting use of funds, other than funds or assets of insurers being liquidated, rehabilitated, reorganized or conserved, which are received by or made available to the Board, or by establishing disappearing or partially or wholly reimbursable revolving funds in the Appropriation Acts, notwithstanding any other provision of Article 21.28 of Chapter 21 of the Insurance Code. This subsection expires January 1, 1994.

(a-1) The provisions of this Act are cumulative of existing law and in the event of conflict the provisions of this Act shall govern.

SECTION 1.09. Section 5(2)A, Article 9.48, Insurance Code, is amended to read as follows:

A. "Covered claim" is an unpaid claim:

(i) of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state;

(ii) against trust funds or an escrow account of an impaired insurer which arises due to a shortage of those funds or in that account;

(iii) for which an impaired insurer is liable in connection with the fidelity of any agent of that insurer as authorized by Article 9.49 of this code; or

(iv) against trust funds or an escrow account of an impaired agent which arises due to a shortage of those funds or in that account and which shall be paid only from funds derived from guaranty fees and not from assessments.

A "covered claim" ~~[Individual "covered claims"]~~ under Subparagraphs (i) and (iii) of this paragraph shall be limited to the lesser of \$250,000 per claimant or \$250,000 per policy ~~[and shall not include any amount in excess of \$250,000 per claimant]~~. The amount of a "covered claim" under Subparagraph (ii) and ~~[or]~~ (iv) of this paragraph is the amount of the unpaid claim up to and not to exceed, the lesser of[:

~~[(i)]~~ the amount of funds actually delivered to the impaired insurer or agent as trust funds or an escrow account for each claimant in a transaction from which the claim arises[;] or

~~[(ii)]~~ \$250,000 per claimant, provided that the cumulative amount of covered claims arising from one transaction may not exceed \$250,000.

SECTION 1.10. Article 9.48, Insurance Code, is amended by adding Section 6A to read as follows:

Sec. 6A. DEPOSIT OF ASSESSMENTS. All assessments collected by the association may be deposited into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The funds deposited shall be accounted for separately from all other funds by the state treasurer to the association.

SECTION 1.11. Section 7, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 7. ASSESSMENTS [ADMINISTRATION]. (a) Whenever the commissioner determines that an insurer or agent has become impaired, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to

supplement the assets of the impaired insurer or agent immediately available to the receiver or the conservator for the purpose of making payment of all covered claims and administrative expenses. The receiver or conservator shall advise the board of those estimates.

(b) The association shall assess insurers amounts necessary to pay the obligations of the association under this article subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers and for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(c) The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. During the period of deferment, no dividends may be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. These payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments [and the board shall make available from the appropriate account maintained by the association funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims and administrative expenses of the impaired insurer or agent. The board shall make additional funds available as the actual need for those funds arises for each impaired insurer or agent.

~~[If the board has determined that additional funds are needed in the administrative or title account it shall advise the commissioner who shall make such assessments as may be needed to produce the necessary funds. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer]. No assessment shall be made to produce funds for the guaranty fee account but such funds shall be derived solely from guaranty fees as provided by Section 6 of this article.~~

~~[The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. The commissioner shall determine the total net direct written premiums of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.~~

~~[Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.~~

~~[The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the association within 30 days after the commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.~~

~~[Funds derived from assessments or from guaranty fees under the provisions of this article shall not become assets of the impaired insurer or agent but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims or administrative expenses, which loan shall be repayable to the extent available from the funds of such impaired insurer or agent, as herein provided.]~~

(d) Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14(a)(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account, the commissioner shall assess insurers to attain the needed funds in the same manner provided by this section.

(e) No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the association ~~[commissioner]~~ under the provisions of this Article 9.48.

SECTION 1.12. Section 9, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 9. ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS.

(a) Upon receipt from an insurer of payment of an assessment or partial assessment, the association shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The association ~~[receiver or conservator of any impaired insurer]~~ shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The association ~~[receiver or conservator]~~ shall also make any interim reports concerning such accounting as may be required by the commissioner or requested by the association. Upon completion of the final report, the association ~~[receiver or conservator]~~ shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

(b) Should the association at any time determine that money exists in the administrative account or the title account in excess of the amount reasonably necessary for efficient future operation under the terms of this article, it shall cause the excess money to be returned pro rata to the holders of any participation receipts

on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized by Section 15 of this article. The amount deducted for those credits shall be deposited with the state treasurer for credit to the general fund of this state. Any excess money remaining after the distribution shall be retained by the association in the guaranty fee account and held pursuant to this article.

SECTION 1.13. Section 10, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 10. ADMINISTRATION AND PAYMENT OF COVERED CLAIMS.

(a) The association shall pay covered claims existing before the determination of the impairment or arising on or before the date three years after the determination of impairment.

(b) The association may not pay a claimant an amount in excess of the obligation of the impaired insurer or agent under the policy or coverage from which the claim arises.

(c) Notwithstanding any other provisions of this article, a covered claim does not include a claim filed with the guaranty fund after the final date set by the court for the filing of claims against the receiver of an impaired insurer or agent.

(d) The association stands in the place of the impaired insurer or agent to the extent of its obligation on the covered claims and, to that extent, has all rights, duties, and obligations of the impaired insurer or agent as if the insurer or agent had not become impaired.

(e) The association shall investigate claims brought against the association, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation, and deny all other claims. The association may review settlements, releases, and judgments to which the impaired insurer or agent or its insureds were parties to determine the extent to which the settlements, releases, and judgments are contested.

(f) The association shall pay claims in any order it may deem reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims.

(g) The association shall establish, subject to the approval of the commissioner, procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver of the impaired insurer or agent shall be deemed notice to the association or its agent and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver.

(h) The association may handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner. Designation as a servicing facility may be declined by a member insurer. The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association. [When an insurer or agent has been designated by the commissioner as impaired, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer or agent, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of covered claims as provided by Section 7 of this article, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments and second in repayment of funds derived from guaranty fees. Such

repayments of funds expended from assessments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

[In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.]

[This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.]

SECTION 1.14. Section 12(b), Article 9.48, Insurance Code, is amended to read as follows:

(b) Notwithstanding any provision to the contrary, the association [receiver or conservator], for the purpose of avoiding undue hardship to a claimant, subject to the approval of the receivership court or the commissioner, as the case may be, may authorize payment of covered claims against an impaired agent without regard to the liability of any insurer or to coverage under any insurance policy. On payment, the association [receiver or conservator] is in all respects subrogated to the rights and claims of the claimant.

SECTION 1.15. Section 14, Article 9.48, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) Delegation of powers and duties. The plan of operation may provide that any or all powers and duties of the association, except those under Sections 7 and 14(c)(3) of this article, may be delegated to a corporation, association, or other organization that performs or will perform functions similar to those of the association or its equivalent in two or more states. The corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection may take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this article.

SECTION 1.16. Section 14(e)(3), Article 9.48, Insurance Code, is amended to read as follows:

(3) The board shall advise and counsel with the commissioner upon matters relating to the solvency of insurers and agents. The commissioner shall call a meeting of the board when he determines that an insurer or agent is insolvent or impaired and may call a meeting of the board when he determines that a danger of insolvency or impairment of an insurer or agent exists. Such a meeting is not open to the public and only members of the board of directors, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings. The board shall notify the commissioner of any information indicating that an insurer or agent may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer or agent. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer or agent, or an insurer or agent the commissioner considers to be in danger of insolvency or impairment, to appear before the board for conference or for the taking of testimony. Members of the board shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of these meetings shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of a board member.

The board shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer or agent and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer or agent and relating to the [amount and timing of partial assessments and the] marshalling of assets [and the processing and handling of covered claims].

SECTION 1.17. Article 9.48, Insurance Code, is amended by amending Section 20 and adding Section 20A to read as follows:

Sec. 20. APPEALS. (a) A member insurer may appeal any action or ruling of the association relating to an assessment made under this article to the commissioner.

(b) Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended.

(c) The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

(d) Venue in a suit against the association relating to any action or ruling of the association made under this article is in Travis County. The association is not required to give an appeal bond in an appeal of a cause of action arising under this article.

Sec. 20A. TAX EXEMPTION. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

SECTION 1.18. Section 5(2)C, Article 9.48, Insurance Code, is repealed.

SECTION 1.19. Section 11, Article 9.48, Insurance Code, is repealed.

SECTION 1.20. Article 21.28-C, Insurance Code, is amended to read as follows:

Art. 21.28-C. PROPERTY AND CASUALTY INSURANCE GUARANTY ACT

Sec. 1. SHORT TITLE. This article shall be known as the Texas Property and Casualty Insurance Guaranty Act.

Sec. 2. PURPOSE. The purpose of this Act is to:

- (1) provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment;
- (2) avoid financial loss to claimants or policyholders because of the impairment of an insurer;
- (3) assist in the detection and prevention of insurer insolvencies; and
- (4) provide an association to assess the cost of that protection among insurers.

Sec. 3. SCOPE. This Act applies to all kinds of direct insurance, but is not applicable to the following:

- (1) life, annuity, health, or disability insurance;
- (2) mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
- (3) fidelity or surety bonds, or any other bonding obligations;
- (4) credit insurance, vendors' single-interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) insurance of warranties or service contracts;
- (6) title insurance;
- (7) ocean marine insurance;
- (8) any transaction or combination of transactions between a person, including an affiliate of such a person, and an insurer, including an affiliate of such an insurer, that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or
- (9) any insurance provided by or guaranteed by government.

Sec. 4. CONSTRUCTION. This Act shall be liberally construed to effect the purposes under Section 2 of this Act, which will constitute an aid and guide to interpretation.

Sec. 5. DEFINITIONS. In this Act:

- (1) "Account" means any one of the three accounts created under Section 6 of this Act.
- (2) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an impaired insurer on December 31 of the year next preceding the date the insurer becomes an impaired insurer.
- (3) "Association" means the Texas Property and Casualty Insurance Guaranty Association.
- (4) "Board" means the board of directors of the association.
- (5) "Claimant" means any insured making a first-party claim or any person instituting a liability claim. A person who is an affiliate of the impaired insurer may not be a claimant.
- (6) "Commissioner" means the commissioner of insurance.
- (7) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
- (8) "Covered claim" means an unpaid claim of an insured or third-party liability claimant that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies.

issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this state, if that insurer becomes an impaired insurer and the third-party claimant or liability claimant or insured is a resident of this state at the time of the insured event, or the property from which the claim arises is permanently located in this state. "Covered claim" shall also include 75 percent of unearned premiums, but in no event shall a covered claim for unearned premiums exceed \$1,000. Individual covered claims shall be limited to \$100,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including adjustment fees and expenses, attorney's fees and expenses, court costs, interest and penalties, and interest and bond premiums incurred prior to the determination that an insurer is an impaired insurer under this Act. "Covered claim" shall not include any punitive, exemplary, extracontractual, or bad-faith damages awarded in a court judgment against an insured or insurer. With respect to a covered claim for unearned premiums, both persons who were residents of this state at the time the policy was issued and persons who are residents of this state at the time the company is found to be an impaired insurer shall be considered to have covered claims under this Act. Where the impaired insurer has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a covered claim under this Act.

(9) "Impaired insurer" means:

(A) a member insurer that is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency and that has been designated an impaired insurer by the receiver; or

(B) a member insurer placed in conservatorship after it has been determined by the receiver to be insolvent and that has been designated an impaired insurer by the receiver.

(10) "Member insurer" means any person who:

(A) writes any kind of insurance to which this Act applies under Section 3 of this Act, including the exchange of reciprocal or inter-insurance contracts; and

(B) is licensed to transact insurance in this state.

(11) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this Act applies, less return premiums on those policies and dividends paid or credit to policyholders on that direct business. The term does not include premiums on contracts between insurers or reinsurers.

(12) "Person" means any individual, corporation, partnership, association, or voluntary organization.

Sec. 6. ASSOCIATION. The Texas Property and Casualty Insurance Guaranty Association is a nonprofit, unincorporated legal entity composed of all member insurers, who must be members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation approved under Section 9 of this Act and shall exercise its powers through the board of directors. For purposes of administration and assessment, the association is divided into the workers' compensation insurance account, the automobile insurance account, and the account for all other lines of insurance to which this Act applies.

Sec. 7. BOARD OF DIRECTORS. (a) The board of directors of the association is composed of nine persons who serve terms as established in the plan



of operation. Five members shall be selected by member insurers, subject to the approval of the commissioner. The remaining members shall be representatives of the general public appointed by the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(b) In approving selections to the board, the commissioner shall consider whether all member insurers are fairly represented.

(c) Members of the board of directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

(d) A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the Texas Department of Insurance;

(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

(e) Each member of the board of directors shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

**Sec. 8. POWERS AND DUTIES OF ASSOCIATION.** (a) The association shall pay covered claims that exist before the designation of impairment arising within 30 days after the designation of impairment, or before the policy expiration date if less than 30 days after the designation of impairment, or before the insured replaces the policy or causes its cancellation, if the insured does so not later than the 30th day after the date of the designation. The obligation is satisfied by paying to the claimant the full amount of a covered claim for benefits.

(b) The association is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the impaired insurer as if the insurer had not become impaired.

(c) The association shall assess insurers amounts necessary to pay the obligations of the association under Subsection (a) of this section after an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than the 30th day before the date on which the assessment is due. A member insurer may not be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order it considers reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, dividends may not be paid to shareholders or policyholders. Deferred assessments shall be paid when the

payment will not reduce capital or surplus below required minimums. The payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of such a company, credited against future assessments.

(d) The association shall investigate claims brought against the association and shall adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements, releases, and judgments to which the impaired insurer or its insureds were parties to determine the extent to which those settlements, releases, and judgments may be properly contested.

(e) The association shall give notice as the commissioner directs under Section 10(c) of this Act.

(f) The association shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such a designation may be declined by a member insurer.

(g) The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this Act.

(h) The association may:

(1) employ or retain persons as necessary to handle claims and perform other duties of the association;

(2) borrow funds necessary to implement this Act in accordance with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to contracts as necessary to implement this Act;

(5) perform other acts as necessary or proper to implement this Act;  
or

(6) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if at the end of any calendar year the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

(i) If a member insurer is insolvent, the association shall provide the money, pledges, guarantees, or other means as are reasonably necessary to discharge the duties of that insurer and:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of that insurer; or

(2) assure payment of the contractual obligations of that insurer.

(j) The board of directors may deposit all money collected by the association into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The funds deposited shall be accounted for separately from all other funds by the state treasurer to the association.

Sec. 9. PLAN OF OPERATION. (a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments take effect on approval in writing by the commissioner.

(b) If the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall adopt reasonable rules as necessary or advisable to implement this Act. Those rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

- (c) All member insurers shall comply with the plan of operation.
- (d) The plan of operation must:
- (1) establish the procedures under which the powers and duties of the association are performed;
  - (2) establish procedures for handling assets of the association;
  - (3) establish the amount and method of reimbursing members of the board of directors;
  - (4) establish procedures by which claims may be filed with the association; and
  - (5) establish acceptable forms of proof of covered claims.
- (e) Notice of claims to the receiver of the impaired insurer constitutes notice to the association or its agent. A list of claims shall be submitted periodically to the association or similar organization in another state by the receiver.
- (f) The plan of operation must:
- (1) establish regular places and times for meetings of the board of directors;
  - (2) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
  - (3) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner not later than the 30th day after the date of the action or decision;
  - (4) establish the procedures under which selections for the board of directors are submitted to the commissioner; and
  - (5) contain additional provisions as necessary or proper for the execution of the powers and duties of the association.
- (g) The plan of operation may provide that any or all powers and duties of the association, except those under Section 8(c) and 8(h)(2) of this Act, are delegated by contract to a corporation, association, or other organization that performs or will perform functions similar to those of the association or its equivalent in two or more states. The corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for the performance of any other functions of the association. A delegation under this subsection takes effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this Act. A contract entered into under this subsection is subject to the performance standards imposed under Section 2(a), Article 21.28, of this code.
- Sec. 10. DUTIES AND POWERS OF COMMISSIONER. (a) The commissioner shall notify the association of the existence of an impaired insurer not later than three days after the commissioner receives notice of the designation of impairment. The association is entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction.
- (b) On request of the board of directors, the commissioner shall provide the association with a statement of the net direct written premiums of each member insurer.
- (c) The commissioner may require that the association notify the insureds of the impaired insurer and any other interested parties of the designation of impairment and of their rights under this Act. The notification shall be by mail at the last known address, if available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.
- (d) The commissioner shall suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that

fails to pay an assessment when due or otherwise fails to comply with the plan of operation. As an alternative, the commissioner may assess a fine on any member insurer that fails to pay an assessment when due. The fine may not exceed the lesser of five percent of the unpaid assessment per month or \$100 per month.

(e) The commissioner may revoke the designation of any servicing facility if the commissioner finds that claims are being handled unsatisfactorily.

(f) Any final action or order of the commissioner under this Act is subject to judicial review by a court of competent jurisdiction.

(g) Venue in a suit against the association relating to any action or ruling of the association made under this Act is in Travis County. The association is not required to give an appeal bond in an appeal of a cause of action arising under this Act.

Sec. 11. EFFECT OF PAID CLAIMS. (a) A person recovering under this Act is considered to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Each insured or claimant seeking the protection of this Act shall cooperate with the association to the same extent as that person would have been required to cooperate with the impaired insurer. The association does not have a cause of action against the insured of the impaired insurer for any sums it has paid out except those causes of action the impaired insurer would have had if the sums had been paid by the impaired insurer and except as provided in Subsection (b) of this section. In the case of an impaired insurer operating on a plan with assessment liability, payments of claims of the association do not reduce the liability of the insureds to the receiver or statutory successor for unpaid assessments.

(b) The association is entitled to recover from the following persons the amount of any covered claim paid on behalf of that person under this Act:

(1) any insured whose net worth on December 31 of the year next preceding the date the insurer becomes an impaired insurer exceeds \$50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this Act; and

(2) any person who is an affiliate of the impaired insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this Act.

(c) The receiver or statutory successor of an impaired insurer is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant those claims priority equal to that which the claimant would have been entitled to in the absence of this Act against the assets of the impaired insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the receiver's expenses.

(d) The association shall file periodically with the receiver of the impaired insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association that shall preserve the rights of the association against the assets of the impaired insurer.

Sec. 12. NONDUPLICATION OF RECOVERY. (a) A person who has a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer that is also a covered claim shall exhaust first the person's rights under the policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery under the insurance policy.

(b) A person who has a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim the person shall seek recovery first from the

association of the residence of the claimant. Any recovery under this Act shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. 13. PREVENTION OF INSOLVENCIES. (a) To aid in the detection and prevention of insurer insolvencies, the board of directors, on majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies and respond to requests by the commissioner to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. Those recommendations are not public documents and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board of directors may prepare a report on the history and causes of the insolvency, based on the information available to the association, and may submit the report to the commissioner.

Sec. 14. EXAMINATION OF THE ASSOCIATION. The association shall be subject to examination and regulation by the commissioner. Not later than March 30 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form approved by the commissioner.

Sec. 15. TAX EXEMPTION. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

Sec. 16. IMMUNITY. There is no liability on the part of, and no cause of action of any nature arises against, any member insurer, the association or its agents or employees, the board of directors, or the commissioner or the commissioner's representatives for any action taken or any failure to act in the performance of powers and duties under this Act.

Sec. 17. STAY OF PROCEEDINGS. All proceedings in which an impaired insurer is a party or is obligated to defend a party in any court in this state shall be stayed for six months and any additional time thereafter as may be determined by the court from the date of the designation of impairment or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the impaired insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend the claim on the merits. The receiver or statutory successor of an impaired insurer covered by this Act shall permit access by the board or its authorized representative to records of the impaired insurer as are necessary for the board in carrying out its functions under this Act with regard to covered claims. In addition, the receiver or statutory successor shall provide the board or its representative with copies of the records on request of the board and at the expense of the board.

Sec. 18. ASSESSMENTS. (a) If the commissioner determines that an insurer has become an impaired insurer, the association shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver for the purpose of making payment of all covered claims. The board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need arises for each impaired insurer.

(b) If the board of directors determines that additional funds are needed in any of the three accounts, it shall advise the commissioner, who shall make assessments as necessary to produce the necessary funds. The commissioner, in determining the proportionate amount to be paid by individual insurers under an assessment, shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in this state by the insurer for those lines of business bears to the total net direct written premium collected by all insurers (except impaired insurers) in this state for those lines of business. The commissioner shall determine the total net direct written premium of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments under this subsection during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

(c) It shall be the duty of each insurer to pay the amount of an assessment under Subsection (b) of this section to the association not later than the 30th day after the commissioner gives notice of the assessment.

(d) Assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for those suits is in Travis County. Either party to the action may appeal to the appellate court having jurisdiction over the cause, the appeal shall be at once returnable to the appellate court having jurisdiction over the cause, and the action so appealed shall have precedence in the appellate court over all causes of a different character pending before the court. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising under this subsection.

(e) An insurer designated as an impaired insurer by the commissioner is exempt from assessment from and after the date of the designation and until the commissioner determines that the insurer is no longer an impaired insurer.

(f) Funds advanced by the association under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of the insurer.

(g) Income from the investment of any of the funds of the association may be transferred to the administrative account authorized under this Act. The funds in the account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. On notification by the association of the amount of any additional funds needed for the administrative account, the commissioner shall assess member insurers to obtain the needed funds in the manner set out in this section. The commissioner shall consider the net direct written premium collected in this state for all lines of business covered by this Act. An assessment for administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state may not exceed \$1,000,000 each calendar year.

Sec. 19. PURPOSE OF ASSESSMENT. (a) The amounts provided under assessments made under this Act are in addition to the marshaling of assets by the receiver under Article 21.28 of this code for the purpose of making payments on behalf of an impaired insurer.

(b) This section does not require the receiver to exhaust the assets of the impaired insurer before an assessment is made or before funds derived from an assessment may be used to pay covered claims.

Sec. 20. ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS.

(a) On receipt from an insurer of payment of an assessment or partial assessment required by the commissioner under Section 18(b) of this Act, the association shall provide the insurer with a participation receipt, which shall create a liability against the account for the line or lines of business for which the assessment was made.

(b) The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of covered claims, the claim of the account has preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner or requested by the association. On completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of those advances to the accounts maintained by the association.

(c) If the association at any time determines that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause those excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 21 of this Act, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in the fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause the excess amount to be deposited with the state treasurer to the credit of the general revenue fund.

Sec. 21. RECOGNITION OF ASSESSMENTS IN PREMIUM TAX OFFSET. One hundred percent of any assessment paid by an insurer under this Act shall be allowed to that insurer as a credit against its premium tax under Article 4.10 of this code. The tax credit referred to in this section shall be allowed at a rate of 10 percent per year for 10 successive years following the date of assessment and, at the option of the insurer, may be taken over an additional number of years. The balance of any tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements under Article 6.12 of this code.

Sec. 22. RELEASE FROM RECEIVERSHIP. An impaired insurer placed in receivership for which advances have been made under the provisions of this Act shall not be authorized, on release from receivership, to issue new or renewal insurance policies until the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the commissioner may, on application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The commissioner may, in approving the plan, place restrictions on the issuance of new or renewal policies as the commissioner considers necessary to the implementation of the plan.

[Sec. 1.—TITLE. This article shall be known and may be cited as the "Texas Property and Casualty Insurance Guaranty Act."

[Sec. 2.—PURPOSE. This Act is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto

by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise:

[Sec. 3. SCOPE. This Act shall apply to all kinds of insurance, including workers' compensation insurance, written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by title insurance companies or title insurance written by any insurer, and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to credit insurance that insures a lender against loss due to default by a borrower in the repayment of a loan secured by a second or junior lien mortgage, nor to insurance that insures a municipal bond holder against loss due to default of a political subdivision in the repayment of a municipal bond, nor to fidelity, surety, and guaranty bonds, nor to home warranty insurance, and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies; and shall not apply to crop insurance reinsured by the Federal Crop Insurance Corporation, to flood insurance reinsured, guaranteed or conditionally assumed by the Federal Insurance Administration; to coverages issued by risk retention groups, to financial guaranty or other forms of insurance offering protection against investment risks.

[Sec. 4. CONSTRUCTION. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

[Sec. 5. DEFINITIONS. As used in this Act

[(1) A. "State Board of Insurance" is the state board of insurance of this state:

[B. "Commissioner" is the Commissioner of Insurance of this State:

[(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed One Thousand Dollars (\$1,000). Individual "covered claims" shall be limited to One Hundred Thousand Dollars (\$100,000), except that the association shall pay the full amount of any "covered claim" arising out of a workers' compensation policy. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and penalties, and interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. "Covered claim" shall not include any punitive, exemplary, extracontractual, or bad faith damages awarded in a court judgment against an insured or insurer. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has



insufficient assets to pay the expenses of administering the receivership or conservatorship estate; that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

[(3) "Insurer" and "member insurer" includes all stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also includes all county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

[(4) "Impaired insurer" is (a) a member insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, a member insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

[(5) "Payment of covered claims" is actual payment and also is utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims.

[(6) "Net direct written premiums" is the gross amount of premiums received from policies of insurance issued in this State to which this Act applies, less return premiums and dividends paid or credited to policyholders. The term does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers.

[(7) "Lines of business" is policies of insurance falling within one of the three following categories:

- [1. Workers' Compensation insurance.
- [2. Automobile insurance.
- [3. All other insurance to which this Act applies.

[(8) "Association" means the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[(9) "Account" means one of the four accounts created under Section 14 of this article.

[(10) "Board" or "board of directors" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[(11) "Unauthorized insurer" means a person or insurer that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code.

[(12) "Nonmember of the association" includes mortgage guaranty insurance companies, Mexican casualty insurance companies, risk retention groups, and all persons and entities authorized to act as agents under this code including without limitation managing general agents, local recording agents, surplus lines agents, and agents subject to Article 21.07 of this code who participated in transactions involving lines of insurance within the scope of this Act.

[Sec. 6. TERMINATION OF POLICIES. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within thirty (30) days after the determination of impairment, or before the policy expiration date if less than thirty (30) days after the determination of impairment, or before the insured replaces the policy or effects its cancellation, if he does so within thirty (30) days of the determination of impairment.

[Upon the determination by the Commissioner that an insurer is an impaired insurer, the conservator or receiver appointed under Article 21.28 or Article 21.28-A of this code shall notify the insureds of the impaired insurer of the determination and of their rights under this Act. Such notification shall be by mail at each insured's address as disclosed by the books and records of the insurer but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient. Such notification may be combined with notice provided under Subsection (a) of Section 3 of Article 21.28 of this code.

[Sec. 7. ASSESSMENTS. (a) Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

(b) When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such or lines of business bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. The Commissioner shall determine the total net direct written premium of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments under this subsection during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

(c) It shall be the duty of each insurer to pay the amount of an assessment under Subsection (b) of this section to the association within thirty (30) days after the Commissioner gives notice of the assessment.

(d) Assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

(e) Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of the designation and until the Commissioner determines that the insurer is no longer an impaired insurer.

[(f) Funds advanced by the association under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided:

[(g) Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article, and provided further that no assessment for administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state shall exceed \$1,000,000 each calendar year.

[Sec. 7A. PURPOSE OF ASSESSMENT. (a) The amounts provided pursuant to assessments made under this article are in addition to the marshaling of assets by the receiver under Article 21.28 of this code for the purpose of making payments on behalf of an impaired insurer.

[(b) This section does not require the receiver to exhaust the assets of the impaired insurer before an assessment is made or before funds derived from an assessment may be used to pay covered claims.

[Sec. 7B. EMERGENCY CLAIMS. (a) In this section, "emergency claims" means those claims:

[(1) that would be covered claims if the insurer was declared an impaired insurer;

[(2) for which no bona fide dispute exists as to the liability of the insurer on the claim or for which payments were begun on liability accepted before the finding of insolvency;

[(3) for which a bona fide hardship exists or will exist with certain policyholders or claimants if their claims are not handled forthwith; and

[(4) for which the insurer under conservation or receivership does not have sufficient funds to pay the emergency claims.

[(b) If before a determination by the Commissioner that the insurer has become an impaired insurer, an insurer has been placed in conservation under an order of the Commissioner based on a finding of insolvency or temporary or permanent receivership under a court order based upon a finding of insolvency, the Commissioner may request from the board of directors of the association the advancement of funds to enable the conservator or receiver to have sufficient funds to pay emergency claims.

[(c) The Commissioner shall certify to the board of directors of the association a list of active claims that are emergency claims and shall certify the amount of additional funds needed to supplement the assets of the insurer to make payment of those emergency claims.

[(d) The Commissioner, in his request, shall state the reason or reasons that a bona fide hardship exists or will exist, that the insurer has not been declared an impaired insurer, and when the Commissioner reasonably anticipates that it will be declared an impaired insurer or released from conservation or receivership.

[(e) Upon receipt of the required certifications, the board of directors may advance the funds necessary to pay the additional claims.

[(f) In order to avoid undue delay in the payment of emergency claims, the conservator or receiver may contract with an insurer licensed to do business in this State or any other qualified organization for the handling and adjustment of those emergency claims.

[(g) If an insolvent insurer is subsequently rehabilitated, any amounts advanced by the association shall be repaid to the association by the insurer or pursuant to any plan of rehabilitation. If an insolvent insurer is subsequently declared an impaired insurer, amounts advanced pursuant to this section shall be considered assessments for covered claims under Section 7 and subject to the provisions of this article.

[Sec. 8. ~~PENALTY FOR FAILURE TO PAY ASSESSMENTS.~~ A. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any member insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure. Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

[B. As an alternative to the penalty provided by Subsection A of this section, the Commissioner may levy a monetary penalty on a member insurer who fails to pay an assessment when due. The monetary penalty may not exceed five percent of the unpaid assessment a month and may not be less than \$100 a month.

[Sec. 9. ~~ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS.~~ (a) Upon receipt from an insurer of payment of an assessment or partial assessment required by the Commissioner under Section 7(b) of this article, the association shall provide the insurer with a participation receipt which shall create a liability against the account for the line or lines of business for which the assessment was made.

[(b) The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of "covered claims" the claim of such account shall have preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the Commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner or requested by the association. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of such advances to the accounts maintained by the association.

[(c) Should the association at any time determine that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause such excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 15 of this article, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in any such fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause such excess amount to be deposited with the State Treasurer for credit to the general fund of this State.

[Sec. 10. ~~PAYMENT OF COVERED CLAIMS.~~ When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator,

as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from the association in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from those advanced by the association. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

[In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from the association for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

[Sec. 11. APPROVAL OF COVERED CLAIMS: Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from the association shall not be liable for any amount over and above that approved by the receiver for a covered claim; and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may, in the discretion of the receiver, modify a rejection or approval of a covered claim for just cause at any time during the pendency of the receivership. The receiver may use funds received from the association to pay a particular covered claim before the receiver has processed all claims to determine which are covered claims.

[If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which

time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from the association shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

[Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action; or (2) of the amount of damages to which such person is therein entitled.

[The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

[Sec. 12. NONDUPLICATION OF RECOVERY. Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. The amount of an approved claim under this Act shall be reduced by the policy limits of or amount paid under such insurance policy, whichever amount is greater. When a claimant exhausts his right under a policy other than a policy of an impaired insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the impaired insurer to recover any amount paid the claimant under that policy.

[Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person

having a covered claim who is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he has exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent; provided, however, that any nonresident holder of a covered claim for damage to property with a permanent location in this State shall be entitled to payment of the covered claim without first having exhausted his right of recovery in his state of residence.

[Sec. 13. ~~RELEASE FROM CONSERVATORSHIP OR RECEIVERSHIP.~~ An impaired insurer placed in conservatorship or receivership for which advances have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the Commissioner may, upon application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

[Sec. 14. ~~ADVISORY ASSOCIATION.~~ A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

- (a) the administrative account;
- (b) the workers' compensation account;
- (c) the automobile account; and
- (d) the other lines of insurance account.

[(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

[B. ~~Board of Directors.~~ (1) The association shall exercise its powers through a board of directors consisting of nine (9) persons, five (5) of whom shall be appointed from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. The remaining members shall be representatives of the general public. Members of the board shall be appointed by the State Board of Insurance to serve overlapping three-year terms, with the terms of three of the members expiring each year. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. If any director ceases to be an officer or employee of a member insurer during the term of office, that office becomes vacant until a successor is appointed. All directors shall be eligible to succeed themselves in office. A public representative may not be:

- [(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;
- [(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

~~[(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity;~~

~~[(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors;~~

~~[(3) Each director of the association shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes);~~

~~[C.—Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:~~

~~[(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;~~

~~[(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;~~

~~[(3) May enter into such contracts as are necessary or proper, including the power to borrow money, to carry out the provisions and purposes of this article;~~

~~[(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;~~

~~[(5) May employ or retain such persons as are necessary to handle the financial transactions of the association; and to perform such other functions as become necessary or proper under this Act;~~

~~[(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and~~

~~[(7) May take such legal action as may be necessary to avoid the payment of improper claims.~~

~~[D.—Plan of Operation.—(1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.~~

~~[(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.~~

~~[(2) All member insurers shall comply with the plan of operation.~~

~~[(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:~~

~~[(a) establish procedures for handling the assets of the association;~~

~~[(b) establish the amount and method of reimbursing members of the board of directors under this section;~~

~~[(c) establish regular places and times for meetings of the board of directors;~~

~~[(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;~~



~~[(e) establish any additional procedures for assessments under Section 7 of this article; and~~

~~[(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.~~

~~[E. Prevention of Insolvencies and Impairments and Administration of Estates. To aid in the detection and prevention of insurer insolvencies and impairments and in the administration of receivership and conservatorship estates:~~

~~[(1) The board of directors shall notify the Commissioner of any information indicating any member, unauthorized insurer, or nonmember of the association may be unable or potentially unable to fulfill its contracts, policies, or contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate. In carrying out its duties under this Act and on written request by the Commissioner, the board of directors shall authorize expenditure of funds from the administrative account for reasonable and necessary administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in those instances in which the Commissioner has notified the board of directors or the board of directors has otherwise become aware that:~~

~~[(a) the nonmember of the association or unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the nonmember of the association or unauthorized insurer;~~

~~[(b) insufficient funds are available from abandoned funds as provided by Section 8 of Article 21.28 of the Insurance Code; and~~

~~[(c) insufficient funds are available to the State Board of Insurance from appropriations for use in meeting those administrative expenses.~~

~~[Funds spent by the association under this provision shall not become assets of the nonmember of the association or unauthorized insurer but are considered a special fund loaned to the receiver or the conservator for payment of administrative expenses, which loan is repayable to the extent available from the funds of the nonmember of the association or unauthorized insurer.~~

~~[(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of~~

confidentiality as is imposed upon examiners under Article 1:18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

~~[The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.~~

~~[(3) The board of directors may make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.~~

~~[(4) The board of directors may make recommendations to the Commissioner for the detection and prevention of member insurer impairments.~~

~~[(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.~~

~~[(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.~~

~~[(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21:28 of the Insurance Code, as amended.~~

~~[Sec. 15.—RECOGNITION OF ASSESSMENTS IN PREMIUM TAX OFFSET. One hundred percent (100%) of any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 4:10 of this code. The tax credit referred to herein shall be allowed at a rate of ten percent (10%) per year for ten (10) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6:12 of this Code.~~

~~[Sec. 16.—IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer of the association or its agents or employees, the association or its agents or employees, members of the board of directors, or the Commissioner or his representatives for any action taken or not taken by them in the performance of their powers and duties under this Act.~~

~~[Sec. 17.—RULES AND REGULATIONS. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be~~

necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.

~~[Sec. 17a. ADVERTISING PROHIBITED. It shall be unlawful for any insurer required to participate in the association to advertise or use in any manner for promotional purposes the fact that its policies are protected under this Act, and such acts of advertisement or promotion shall constitute unfair methods of competition or unfair or deceptive acts or practices under Article 21.21, Insurance Code, and shall be subject to the provisions thereof.]~~

~~[Sec. 18. APPEALS. Any action or ruling of the Commissioner under this Act may be appealed as provided in Article 1.04 of the Insurance Code. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.]~~

~~[Sec. 19. CERTAIN EVIDENCE NOT ADMISSIBLE, UNFAIR PRACTICES. (1) In any lawsuit brought by a conservator or receiver of an impaired insurer for the purpose of recovering assets of the impaired insurer, the fact that claims against the impaired insurer have been or will be paid under the provisions of this article shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.]~~

~~[(2) The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Insurance Code, as amended, and shall be subject to the provisions thereof.]~~

~~[Sec. 20. CONTROL OVER CONFLICTS. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and other law relating to the subject matter of this Act or its application, the provisions of this Act shall control, except Articles 21.28 and 21.28-A of this code always prevail over the provisions of this Act.]~~

~~[Sec. 21. UNCONSTITUTIONAL APPLICATION PROHIBITED. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.]~~

~~[Sec. 22. SEVERANCE CLAUSE. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.]~~

SECTION 1.21. Article 21.28-D, Insurance Code, is amended to read as follows:

Art. 21.28-D. LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE INSURANCE GUARANTY ASSOCIATION

Sec. 1. SHORT TITLE. This Act shall be known and may be cited as the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act.

Sec. 2. PURPOSE. The purpose of this Act is to protect, subject to certain limitations, the persons specified in Section 3(a) of this Act against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in Section 3(b) of this Act, because of the impairment or insolvency of the member insurer that issued the policies or contracts. To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this Act.

Sec. 3. COVERAGE AND LIMITATIONS. (a) This Act provides coverage for a policy or contract specified in Subsection (b) of this section to:

(1) a person, other than a nonresident certificate holder under a group policy or contract, who is the beneficiary, assignee, or payee of a person covered under Paragraph (2) of this subsection; and

(2) a person who is an owner of or certificate holder under the policy or contract; or, in the case of an unallocated annuity contract, to the person who is the contract holder, and who:

(A) is a resident; or

(B) is not a resident, but only if:

(i) the insurers that issued the policies or contracts are domiciled in this state;

(ii) the insurers never held a license or certificate of authority in the states in which the persons reside;

(iii) the states have associations similar to the association created by this Act; and

(iv) the person is not eligible for coverage by the associations.

(b) This Act provides coverage to the persons specified in Subsection (a) of this section for direct, non-group life, health, accident, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, group hospital service contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Act. This Act also provides coverage for all other insurance coverages written by mutual assessment corporations, local mutual aid associations, statewide mutual assessment companies, and stipulated premium companies licensed to do business in this state. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(c) This Act does not provide coverage for:

(1) a portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(2) a policy or contract of reinsurance, unless assumption certificates have been issued;

(3) a portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four years before the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for a lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) a portion of a policy or contract, to the extent that it provides dividends or experience rating credits, or provides that fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time when it was not licensed to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; and

(8) a portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, benefit plan for a union or association of natural persons, or a government lottery.

(d) The benefits for which the association may become liable may not exceed the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

Sec. 4. CONSTRUCTION. This Act shall be liberally construed to effect the purpose under Section 2 of this Act. Section 2 of this Act shall be used as an aid and guide to interpretation.

Sec. 5. DEFINITIONS. As used in this Act:

(1) "Account" means either of the two accounts created under Section 6 of this Act.

(2) "Association" means the Life, Accident, Health, and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

(3) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under Section 3 of this Act. A contractual obligation does not include:

(A) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 in the aggregate under one or more covered policies on any one life;

(B) an amount in excess of \$100,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of \$5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

(C) an amount in excess of \$200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life; or

(D) punitive, exemplary, extracontractual, or bad faith damages, whether agreed to or assumed by an insurer or insured or imposed by a court of competent jurisdiction.

(4) "Covered policy" means any policy or contract within the scope of this Act under Section 3 of this Act.

(5) "Impaired insurer" means:

(A) A member insurer that is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of Article 21.28 or 21.28-A, Insurance Code, and that has been designated an "impaired insurer" by the commissioner; or

(B) A member insurer determined in good faith by the commissioner to be unable or potentially unable to fulfill its contractual obligations.

(6) "Insolvent insurer" means a member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes impaired to the extent prohibited by law and that has been designated an "insolvent insurer" by the commissioner.

(7) "Member insurer" means any insurer licensed or that holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under Section 3 of this Act, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, including a mutual assessment corporation, a local mutual association, a statewide mutual assessment company, and a stipulated premium company licensed to do business in this state, but does not include:

- (A) a health maintenance organization;
- (B) a fraternal benefit society;
- (C) a mandatory state pooling plan;
- (D) an insurance exchange; or
- (E) any entity similar to any of those described by

Paragraphs (A)-(D) of this subdivision.

(8) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor to that entity.

(9) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(10) "Premiums" means amounts received on covered policies or contracts less premiums, considerations, and deposits returned on those policies or contracts, and less dividends and experience credits on those policies or contracts. "Premiums" does not include amounts received for policies or contracts or for the portions of any policies or contracts for which coverage is not provided under Section 3(b) of this Act, except that assessible premiums shall not be reduced on account of Section 3(c)(3) of this Act relating to interest limitations and Section 5(3) of this Act relating to limitations with respect to any one individual, any one participant, any one annuitant, and any one contract holder. "Premiums" does not include premiums in excess of five million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code (26 U.S.C. Sections 401, 403(b) and 457). "Premiums" also does not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act.

(11) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business.

(12) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(13) "Unallocated annuity contract" means any annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Sec. 6. CREATION OF THE ASSOCIATION. (a) The Life, Accident, Health, and Hospital Service Insurance Guaranty Association is a nonprofit legal entity. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 of this Act and shall exercise its powers through a board of directors

established under Section 7 of this Act. For purposes of administration and assessment, the association shall maintain two accounts:

(1) the life insurance and annuity account, which includes the following subaccounts:

(A) the life insurance account;

(B) the annuity account; and

(C) the unallocated annuity account, which includes contracts qualified under Section 403(b) of the United States Internal Revenue Code (26 U.S.C. Section 403(b)); and

(2) the accident, health, and hospital services insurance account.

(b) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of this code and any other law governing insurance in this state. Meetings or records of the association are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), but may be opened to the public on majority vote of the board of directors of the association.

Sec. 7. BOARD OF DIRECTORS. (a) The State Board of Insurance shall appoint a board of directors of the association consisting of nine members, three of whom shall be chosen from employees or officers chosen from the ten member companies having the largest total direct premium income based on the latest financial statement on file at date of appointment, two of whom shall be chosen from the other companies to give fair representation to all such member insurers based on due consideration of their varying categories of premium income and geographical location, and four of whom shall be representatives of the general public. Members serve for six-year staggered terms, with the terms of three members expiring each odd-numbered year. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. Should any director cease to be an officer or employee of a member insurer during his term of office, such office shall become vacant until his successor shall have been appointed. All directors shall be eligible to succeed themselves in office. A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

(3) related to a person described by Subparagraph (1) or (2) of this paragraph within the second degree of affinity or consanguinity.

(b) Each director of the association shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board may not otherwise be compensated by the association for their services.

Sec. 8. POWERS AND DUTIES OF THE ASSOCIATION. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;

(2) provide the moneys, pledges, notes, guarantees, or other means as are proper to effectuate Subdivision (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under Subdivision (1) of this subsection; or

(3) loan money to the impaired insurer.

(b) If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, subject to the conditions specified in Subsection (c) of this section, the association shall:

(1) take any of the actions specified in Subsection (a) of this section, subject to the conditions in that subsection; or

(2) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for substitute benefits under claims of emergency or hardship under standards proposed by the association and approved by the commissioner.

(c) The association is subject to Subsection (b) of this section only if:

(1) the laws of the impaired insurer's state of domicile provided that, until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses of the associations and interest on all those payments and expenses have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations:

(A) the delinquency proceeding may not be dismissed;

(B) the impaired insurer and its assets may not be returned to the control of its shareholders or private management; and

(C) the impaired insurer may not solicit or accept new business or have any suspended or revoked license restored; and

(2) the impaired insurer is a domestic insurer, and has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or

(3) the impaired insurer is a foreign or alien insurer and:

(A) it has been prohibited from soliciting or accepting new business in this state;

(B) its certificate of authority has been suspended or revoked in this state; and

(C) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(d) Except as provided by Subsection (e) of this section, if a member insurer is an insolvent insurer, the association shall provide the moneys, pledges, guarantees, or other means as are reasonably necessary to discharge the duties of the insolvent insurer and:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(2) assure payment of the contractual obligations of the insolvent insurer.

(e) When proceeding under Subsections (b)(2) or (d) of this section, with respect to only life and health insurance policies the association shall:

(1) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) with respect to a group policy or contract, the later of:



(i) the earlier of the next renewal date under the policy or contract or the 45th day after the date the association becomes obligated with respect to the policy; or

(ii) the 30th day after the date the association becomes obligated with respect to the policy; or

(B) with respect to an individual policy, the later of:

(i) the earlier of the next renewal date under the policy, if any, or the date one year after the date the association becomes obligated with respect to the policy; or

(ii) the 30th day after the date the association becomes obligated with respect to the policy;

(2) make diligent efforts to provide all known insureds or group policyholders notice before the 30th day before the benefits provided are terminated; and

(3) with respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of Subsection (f) of this section, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(f) In providing the substitute coverage required under Subsection (e)(3) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy. Alternative or reissued policies shall be offered without requiring evidence of insurability, and may not provide for any waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure any alternative or reissued policy.

(g) An alternative policy adopted by the association is subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(h) An alternative policy issued by the association must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(i) An alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(j) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(k) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy cease on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(l) When proceeding under Subsection (b)(2) or (d) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association

shall assure the payment or crediting of a rate of interest consistent with Section 3(c)(3) of this Act.

(m) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this Act with respect to that policy or coverage, except with respect to any claims incurred or any net cash surrender value due in accordance with the provisions of this Act.

(n) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(o) The protection provided by this Act does not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(p) In carrying out its duties under this section, the association may, subject to approval by the court:

(1) impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement if the association finds that the amounts that can be assessed under this Act are less than the amounts needed to assure full and prompt performance of the association's duties under this Act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to make the imposition of the permanent policy or contract liens in the public interest; or

(2) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(q) If the association fails to act within a reasonable period of time as provided in Subsections (b)(2), (d), and (e) of this section, the commissioner may assume the powers and duties of the association under this Act with respect to impaired or insolvent insurers.

(r) The association may render assistance and advice to the commissioner, on request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(s) The association may appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this Act. This right extends to all matters germane to the powers and duties of the association, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association may appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(t) A person receiving benefits under this Act shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received under this Act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of the rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition to the receipt of a right or benefit under this Act. The subrogation rights of the association under

this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this Act.

(u) The association has all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such a policy or contract.

(v) The association may:

(1) enter into contracts as are necessary or proper to carry out the provisions and purposes of this Act;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 9 of this Act and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this Act, and any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain employees or contractors to handle the financial transactions of the association and to perform other functions under this Act;

(5) take legal action as may be necessary to avoid payment of improper claims; and

(6) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life, accident, health, or hospital service insurer, but the association may not issue insurance policies or annuity contracts other than those issued to perform its obligations under this Act.

(w) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

Sec. 9. ASSESSMENTS. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the association shall assess the member insurers, separately for each account established by Section 6(a) of this Act, at such times and for such amounts as the board of directors finds necessary. All assessments are due on a date specified by the association that may not be earlier than the 30th day after the date on which prior written notice is given to the member insurers. Interest accrues on the unpaid amount at a rate of 10 percent beginning on the due date.

(b) There are two classes of assessments, as follows:

(1) Class A assessments are made to meet administrative costs of the association, administrative expenses properly incurred under this Act relating to any unauthorized insurer or nonmember of the association, and other general expenses not related to a particular insolvent or impaired insurer; and

(2) Class B assessments are made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

(c) The amount of a Class A assessment for each account is determined by the board of directors taking into consideration one or more of the following: annual premium receipts, admitted assets, or insurance in force, as reflected in the annual statements for the year preceding the assessment.

(d) The amount of a Class B assessment shall be divided among the separate accounts as reflected in the annual statements for the year preceding the assessment in the same proportion that the premiums from the policies covered by each account were received by the insolvent or impaired insurer from all covered policies during the year preceding impairment.

(e) Class A assessments shall be allowed as a credit on the amount of premium taxes in the manner provided by Article 1.16 of this code.

(f) Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bear to the premiums received on all business by all assessed member insurers.

(g) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer may not be made until necessary to implement the purposes of this Act. Classification of assessments under Subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(h) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the association, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments on a member insurer for each account may not exceed one percent of the insurer's premiums on the policies covered by the account in any one calendar year.

(i) If an assessment against a member insurer is abated or deferred under Subsection (h) of this section, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this subsection. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

(j) The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer, the amount by which the assets exceed the amount the board of directors finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(k) The association shall issue to each insurer paying a Class B assessment under this Act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.

(l) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due. Any insurer whose certificate of authority to do business in this state is canceled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

(m) The amounts provided pursuant to assessments made under this section are supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.

Sec. 10. PLAN OF OPERATION. (a) The association operates under a plan of operation approved by the commissioner. The association may amend the plan, subject to the approval of the commissioner. An amendment to the plan becomes effective on the date on which the commissioner approves the amendment, or on the 30th day after the date the amendment is submitted to the commissioner for approval, if the commissioner does not approve or disapprove the amendment before that date.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation must, in addition to requirements of this Act:

- (1) establish procedures for handling the assets of the association;
- (2) establish the amount and method of reimbursing members of the board of directors under Section 7 of this Act;
- (3) establish regular places and times for meetings, including telephone conference calls, of the board of directors;
- (4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
- (5) establish any additional procedures for assessments under Section 9 of this Act; and
- (6) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under Sections 8(u) and 9 of this Act, are delegated to a corporation, association, or other organization that performs functions similar to those of this association, or its equivalent, in two or more states. The corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection may take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this Act.

Sec. 11. DUTIES AND POWERS OF THE COMMISSIONER. (a) In addition to the duties and powers enumerated elsewhere in this Act, the commissioner shall provide the association, on request, with a statement of the premiums in this and any other appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, the commissioner shall serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand does not excuse the association from the performance of its powers and duties under this Act.

(c) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent of the unpaid assessment per month and may not be less than \$100 per month.

(d) An action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken before the 61st day after the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company.

(e) The commissioner, as receiver of an impaired insurer, may notify all interested persons of the effect of this Act.

Sec. 12. PREVENTION OF INSOLVENCIES. (a) The commissioner shall:

(1) notify the commissioners of all the other states, territories of the United States, and the District of Columbia by mail not later than the 30th day after the commissioner takes any of the following actions against a member insurer:

- (A) revokes a license;
- (B) suspends a license; or

(C) makes any formal order that the insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(2) report to the board of directors when the commissioner has taken any of the actions set forth in Subdivision (1) of this subsection or has received a report from any other commissioner indicating that a similar action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from the other commissioner;

(3) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer; and

(4) furnish to the board of directors the National Association of Insurance Commissioners Insurance Regulatory Information System ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners.

(b) The board may use the information described by Subsection (a) of this section in carrying out its duties and responsibilities under this Act. The board shall keep the report and the information contained in the report confidential until it is made public by the commissioner or other lawful authority.

(c) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(d) The board of directors may, on majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. These reports and recommendations are not public documents and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(e) The board of directors shall, on majority vote, notify the commissioner of information indicating a member insurer may be an impaired or insolvent insurer.

(f) The board of directors may, on majority vote, request that the commissioner order an examination of any member insurer that the board in good faith believes may be an impaired or insolvent insurer. Not later than the 30th day after the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors before its release to the public, but this does not preclude the commissioner from complying with Subsection (a) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it is open to public inspection before the release of the examination report to the public.

(g) The board of directors may, on majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(h) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing any information as it has in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of

directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by the other associations.

Sec. 13. CREDITS FOR ASSESSMENTS PAID. (a) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner under Section 9(a) of this Act at percentages of the original face amount approved by the commissioner, for calendar years as follows:

100 percent for the calendar year of issuance, which shall be reduced 10 percent a year for each year thereafter for a period of 10 years.

(b) The insurer may offset the amount written off by it in a calendar year under Subsection (a) of this section against its premium tax liability to this state accrued with respect to business transacted in that year. An insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within the year.

(c) Any sums acquired by refund, pursuant to Section 9(j) of this Act, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in Subsection (b) of this section, and are not then needed for purposes of this Act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Sec. 14. MISCELLANEOUS PROVISIONS. (a) This Act does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) The association shall maintain records of all negotiations and meetings in which the association or its representatives discuss the activities of the association in carrying out its powers and duties under Section 8 of this Act. Records of the negotiations or meetings may be made public only on the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, on the termination of the impairment or insolvency of the insurer, or on the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to report on its activities under Section 15 of this Act.

(c) To carry out its obligations under this Act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under Sections 8(t) and (u) of this Act. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this Act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets that the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyholders of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In making this determination, the court shall consider the welfare of the policyholders of the continuing or successor insurer.

(e) A distribution to stockholders of an impaired or insolvent insurer may not be made until the total amount of valid claims of the association for funds expended in carrying out its powers and duties under Section 8 of this Act with respect to the insurer have been recovered with interest by the association.

(f) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order may recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of Subsections (g), (h), and (i) of this section.

(g) A distribution to stockholders is not recoverable under Subsection (f) of this section if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(h) A person that was an affiliate that controlled the insurer at the time distributions subject to Subsection (f) of this section were paid is liable for the amount of distributions received. A person that was an affiliate that controlled the insurer at the time the distributions were declared is liable for the amount of distributions the person would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(i) The maximum amount recoverable under Subsections (f) and (h) of this section is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(j) If a person liable under Subsection (h) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(k) An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article, or for which guaranty fees have been provided, may not, on release from conservatorship or receivership, issue new or renewal insurance policies until the insurer has repaid in full the amount of guaranty fees furnished by the association. The commissioner may, on application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operation by the released insurer for repayment. The commissioner may, in approving such plan, place restrictions on the issuance of new or renewal policies as necessary to the implementation of the plan. The commissioner shall give 10 days' notice of a hearing under this subsection to the association, and the association and member insurers that paid assessments in relation to the impaired insurer are entitled to appear at and participate in the hearing. Money recovered by the association under this subsection shall be repaid to the member insurers that paid assessments in relation to the impaired insurer on return of the appropriate certificate of contribution.

Sec. 15. EXAMINATION OF THE ASSOCIATION; ANNUAL REPORT. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than the 120th day after the last day of the association's fiscal year, a financial report in a form approved by the commissioner and a report of the association's activities during the preceding fiscal year.

Sec. 16. TAX EXEMPTIONS. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property.

Sec. 17. IMMUNITY. There is no liability on the part of and no cause of action of any nature arises against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or the commissioner's representatives, for any action or omission in the performance of powers and duties under this Act. This immunity extends to the



participation in any organization of one or more other state associations of similar purposes and to any similar organization and its agents or employees.

Sec. 18. STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed until the 60th day after the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. The association may apply to have any decision, order, verdict, or finding based on default set aside by the same court that made the default judgment and may defend against the suit on the merits.

Sec. 19. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY ASSOCIATION ACT IN INSURANCE SALES; NOTICE TO POLICYHOLDERS. (a) A person may not make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, that uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this Act. This section does not apply to the association or any other entity which does not sell or solicit insurance.

(b) The association shall prepare a summary document describing the general purposes and current limitations of the Act and complying with Subsection (c) of this section. This document shall be submitted to the commissioner for approval. Except as provided by Subsection (d) of this section, an insurer may not deliver a policy or contract described in Section 3 of this Act to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract. The document shall be available on request by a policyholder. The distribution, delivery, or contents or interpretation of this document does not guarantee that the policy or the contract or the holder of the contract or policy is covered in the event of the impairment or insolvency of a member insurer. The document shall be revised by the association as amendments to the Act may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this Act.

(c) The document prepared under Subsection (b) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

(1) state the name and address of the association and insurance department;

(2) warn the policy or contract holder that the association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(3) state that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(4) state that the policy or contract holder should not rely on coverage under the association when selecting an insurer; and

(5) provide other information as directed by the commissioner.

(d) An insurer or agent may not deliver a policy or contract described in Section 3(b) of this Act and excluded under Section 3(c) of this Act from coverage under this Act unless the insurer or agent, before or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses

that the policy or contract is not covered by the association. The commissioner shall by rule specify the form and content of the notice.

Sec. 20. SUITS AGAINST ASSOCIATION. (a) Venue in a suit against the association arising under this article is in Travis County.

(b) The association is not required to give an appeal bond in an appeal of a cause of action under this article.

[Sec. 2. PURPOSE. The purpose of this Act is to protect policyowners; insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies; accident insurance policies; health insurance policies; annuity contracts; and supplemental contracts; and the holders of group hospital service contracts, subject to certain limitations; against failure in the performance of contractual obligation due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this Act, and (3) the association is authorized to proceed in the prescribed manner, in the detection and prevention of insurer impairments.

[Sec. 3. SCOPE. (1) This Act shall apply:

[(a) to direct life insurance policies; accident insurance policies; health insurance policies; annuity contracts including unallocated annuity contracts except those specifically excluded in this Act, and contracts supplemental to life; accident or health insurance policies; group hospital service contracts and annuity contracts issued by any domestic member insurer and all such policies and contracts issued by a foreign or alien member insurer and all of those insurance policies and annuity contracts and all other insurance coverages written by mutual assessment corporations, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, and stipulated premium insurance companies licensed to do business in this state; and

[(b) with respect to such policies and contracts:

[(i) to those persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under Paragraph (ii) or (iii); and

[(ii) to those persons who are owners of or certificate holders under those policies or contracts and who are residents of this state at the time such insurer becomes an impaired insurer as defined in this Act; or

[(iii) to those persons who are not residents of this state at that time but who meet all of the following conditions:

[(A) the policies or contracts are issued by insurers domiciled in this state;

[(B) at the time the policies or contracts were issued, the persons were residents of this state;

[(C) the insurers did not hold a license or certificate of authority in the states in which the persons reside at the time a delinquency proceeding as defined by Article 21.28 of this code is commenced against those insurers;

[(D) the other states have associations similar to the association created by this Act; and

[(E) the persons are not eligible for coverage by those associations in the other state.

[(2) This Act shall not apply to:

[(a) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

[(b) Any kind of reinsurance contract or agreement between insurers, the terms of which do not create a direct liability of the assuming

insurer, or the terms of which do not require the creation of a direct liability to the policyholder through issuance of an assumption certificate, or other written instrument;

~~[(c) Any kind of insurance or annuities, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or by a separate entity;~~

~~[(d) Any such policies or contracts issued by a foreign or alien insurer on nonresidents of this state at the time such insurer becomes an impaired insurer as defined in this Act;~~

~~[(e) Any such policy or contracts of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statutes or regulations for residents of this state protection substantially similar to that provided by this Act for residents of other states;~~

~~[(f) Any such policies or contracts issued by fraternal benefit societies and assessment-as-needed companies, nor to such policies or contracts issued by insurers subject to the provisions of Chapter 360, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.28-C, Vernon's Texas Insurance Code);~~

~~[(g) Subject to Section 12 of this Act pertaining to the payment of expenses of administration, any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:~~

~~[(i) a multiple employer welfare arrangement as defined by Section 514 of the Employee Retirement Income Security Act of 1974;~~

~~[(ii) a minimum premium group insurance plan;~~

~~[(iii) a stop-loss group insurance plan; or~~  
~~[(iv) an administrative services only contract;~~

~~[(h) Any policy or contract issued in this state by a member, nonmember, or unauthorized insurer when the insurer was not licensed or did not have a certificate of authority to do insurance business in this state subject to Section 12 of this Act pertaining to the payment of expenses of administration;~~

~~[(i) Any portion of a policy or contract to the extent that the rate of interest on which it is based:~~

~~[(i) averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and~~

~~[(ii) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;~~

~~[(j) Any portion of a policy or contract that constitutes an unallocated annuity contract issued to an employee pension benefit plan which provides fixed benefits and which is not an individual account plan;~~

~~[(k) Any portion of a financial guarantee, funding agreement, or guaranteed investment contract which (1) contains no mortality~~

guarantees and (2) is not issued to or in connection with a specific employee benefit plan or a governmental lottery.

[Sec. 4.—CONSTRUCTION. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

[Sec. 5.—DEFINITIONS. As used in this Act:

[(1) "Account" means any of the four accounts created under Section 6 of this Act.

[(2) "Association" means the Life, Accident, Health and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

[(3) "Commissioner" means the Commissioner of Insurance of this state.

[(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include:

[(a) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 in the aggregate under one or more covered policies on any one life;

[(b) an amount in excess of \$100,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of \$5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

[(c) an amount in excess of \$200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life;

[(d) any benefits that would have been payable under any group life, accident, or health policies or contracts of the impaired insurer for claims incurred after the next renewal date under those policies or contracts or 90 days, but in no event less than 60 days, after the date that a permanent receiver has been appointed for the insurer by a court of competent jurisdiction, whichever occurs first; or

[(e) punitive, exemplary, extracontractual, or bad faith damages, whether agreed to or assumed by an insurer or insured or imposed by a court of competent jurisdiction.

[If the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship of the impaired insurer, that portion of the expenses of administration incurred in the processing and payment of claims against the impaired insurer shall also be a contractual obligation under this Act.

[(5) "Covered policy" means any policy or contract within the scope of this Act under Section 3.

[(6) "Member insurer" means any insurance company authorized to transact in this state any kind of insurance to which this Act applies under Section 3.

[(7) "Insolvent insurer" means a member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes, after the effective date of this Act, impaired to the extent prohibited by law.

[(8) "Impaired insurer" means:

[(a) A member insurer which, after the effective date of this Act, is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code); and that has been designated an "Impaired Insurer" by the commissioner, or

[(b) A member insurer determined in good faith by the commissioner after the effective date of this Act to be unable or potentially unable to fulfill its contractual obligations.

[(9) "Premiums" means direct gross insurance premiums and annuity considerations collected from persons residing or domiciled in the State of Texas on covered contracts and policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers nor do "premiums" include any premiums in excess of \$5,000,000 on any covered unallocated annuity contract. "Premiums" also do not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. As used in Section 9, "premiums" are those for the calendar year preceding the determination of insolvency or impairment.

[(10) "State Board of Insurance" means the State Board of Insurance created under Article 1.02, Insurance Code, as amended.

[(11) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

[(12) "Unauthorized insurer" means a person or insurer that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code.

[(13) "Nonmember of the association" includes, for the purposes of Section 12 of this Act, fraternal benefit societies, assessment-as-needed companies, and all persons and entities authorized to act as agents under this code who solicit policies and contracts to which this Act applies including, without limitation, legal reserve life insurance agents, and agents subject to Article 21.07 of this code and who participated in transactions involving types of insurance within the scope of this Act.

[(14) "Unallocated annuity contract" means any annuity contract or group annuity certificate that is not issued to and owned by an individual person including guaranteed interest contracts and deposit administration contracts, except to the extent any annuity benefits under that contract or certificate are guaranteed to an individual person by an insurer.

[Sec. 6: CREATION OF THE ASSOCIATION. (1) There is created hereby a nonprofit legal entity to be known as the Life, Accident, Health and Hospital Service Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 below, and shall exercise its powers through a board of directors established under Section 7 below. For purposes of administration and assessment, the association shall establish four accounts:

[(a) The accident, health and hospital services account;

- ~~[(b) The life insurance account;~~
- ~~[(c) The annuity account; and~~
- ~~[(d) The administrative account.~~

~~[(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.~~

~~[Sec. 7. BOARD OF DIRECTORS. (1) The State Board of Insurance shall appoint a board of directors of the association consisting of nine members, three of whom shall be chosen from employees or officers chosen from the ten member companies having the largest total direct premium income based on the latest financial statement on file at date of appointment, two of whom shall be chosen from the other companies to give fair representation to all such member insurers based on due consideration of their varying categories of premium income and geographical location, and four of whom shall be representatives of the general public. Members serve for six-year staggered terms, with the terms of three members expiring each odd-numbered year. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. Should any director cease to be an officer or employee of a member insurer during his term of office, such office shall become vacant until his successor shall have been appointed. All directors shall be eligible to succeed themselves in office. A public representative may not be:~~

~~[(A) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;~~

~~[(B) a person required to register with the secretary of state under Chapter 305, Government Code; or~~

~~[(C) related to a person described by Subparagraph (A) or (B) of this paragraph within the second degree of affinity or consanguinity.~~

~~[(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.~~

~~[(3) Each director of the association shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).~~

~~[Sec. 8. POWERS AND DUTIES OF THE ASSOCIATION. In addition to the powers and duties enumerated in other sections of this Act,~~

~~[(1) If a member insurer becomes an insolvent insurer, as that term is herein defined, and has been designated an "Impaired Insurer" by the commissioner, the association shall, upon entry by a court of competent jurisdiction after the effective date of this Act of an order appointing a receiver, either temporary or permanent, to take charge of the assets of such insolvent insurer, subject to any reasonable conditions imposed by the association and approved by the commissioner, guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of such insolvent insurer, and shall make or cause to be made prompt payment of the contractual obligations of such insolvent insurer.~~

~~[(2) If a member insurer becomes an impaired insurer, as that term is herein defined, the association may, subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner,~~

~~[(a) guarantee or reinsure, or cause to be guaranteed or reinsured, the impaired insurer's covered policies; or~~

~~[(b) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate Subparagraph (a) above, and assure payment~~

of the impaired insurer's contractual obligations pending action under Subparagraph (a) above, or

~~[(c) loan money to the impaired insurer.~~

~~[(3) In carrying out its duties under Paragraphs (1) and (2), above, the association may impose moratoriums or policy liens against the nonforfeiture values of any contractual obligation under a covered policy; and~~

~~[(4) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.~~

~~[(5) The association shall have standing to appear before any court in this state with jurisdiction over an insolvent insurer or an impaired insurer concerning which the association is or may become obligated under this Act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the insolvent insurer or the impaired insurer and the termination of the covered policies and contractual obligations:~~

~~[(6) (a) Any person receiving benefits under this Act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this Act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this Act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.~~

~~[(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer or the impaired insurer as that possessed by the person entitled to receive benefits under this Act.~~

~~[(7) The contractual obligations of the insolvent insurer or impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the insolvent insurer or impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by Paragraph (3):~~

~~[(8) The association may:~~

~~[(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this Act;~~

~~[(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under Section 9;~~

~~[(c) borrow money to effect the purposes of this Act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;~~

~~[(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;~~

~~[(e) negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association;~~

~~[(f) take such legal action as may be necessary to avoid payment of improper claims;~~

~~[(g) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity~~

contracts other than those issued to perform the contractual obligations of the impaired insurer.

[Sec. 9. ASSESSMENTS. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the commissioner shall assess the member insurers, separately for each account established by Section 6 of this Act, at such times and for such amounts as the board of directors finds necessary. All assessments ordered by the commissioner shall be payable to the association and are due on a date specified by the commissioner which may not be earlier than the 30th day after the date on which prior written notice is given to the member insurers. Interest accrues on the unpaid amount at a rate of 10 percent beginning on the due date.

[(2) There shall be two classes of assessments, as follows:

[(a) Class A assessments shall be made for the purpose of meeting administrative costs of the association, the administrative expenses properly incurred under Subsection (1) of Section 12 of this Act relating to any unauthorized insurer or nonmember of the association, and other general expenses not related to a particular insolvent or impaired insurer,

[(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

[(3)(a) The amount of any Class A assessment for each account shall be determined by the board of directors taking into consideration one or more of the following: annual premium receipts, admitted assets, or insurance in force, as reflected in the annual statements for the year preceding the assessment. The amount of any Class B assessment shall be divided among the separate accounts as reflected in the annual statements for the year preceding the assessment in the same proportion that the premiums from the policies covered by each account were received by such insolvent or impaired insurer from all covered policies during the year preceding impairment;

[(b) Class A assessments shall be allowed as a credit on the amount of premium taxes in the manner provided by Article 1.16 of this code. Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bears to such premiums received on all business by all assessed member insurers,

[(c) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Paragraph (2), above, and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

[(4) The commissioner may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed one percent of such insurer's premiums on the policies covered by the account.

[(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in Paragraph (4), above, the amount by which such assessment is abated or deferred, may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this paragraph. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount



sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

~~[(6) The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer, the amount by which the assets exceed the amount the board of directors finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.~~

~~[(7) The association shall issue to each insurer paying a Class-B assessment under this Act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.~~

~~[(8) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due. Any insurer whose certificate of authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.~~

~~[(9) The provisions of this section shall be valid and enforceable so long as the provisions of Section 19 remain in full force and effect.~~

~~[(10) The amounts provided pursuant to assessments made under this section are considered to be supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.~~

~~[Sec. 10. PLAN OF OPERATION. (1)(a) The association shall submit to the commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the State Board of Insurance;~~

~~[(b) If the association fails to submit a suitable plan of operation within 180 days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.~~

~~[(2) All member insurers shall comply with the plan of operation.~~

~~[(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:~~

~~[(a) establish procedures for handling the assets of the association;~~

~~[(b) establish the amount and method of reimbursing members of the board of directors under Section 7;~~

~~[(c) establish regular places and times for meetings of the board of directors;~~

~~[(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;~~

~~[(e) establish any additional procedures for assessments under Section 9;~~

~~[(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.~~

~~[(4) The plan of operation may provide that any or all powers and duties of the association, except those under Paragraph (8)(c) of Section 8 and Section 9, are delegated to a corporation, association, or other organization which~~

performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this paragraph shall take effect only with the approval of the board of directors, the commissioner, and the court in which the delinquency proceeding, if any, is pending and may be made only to a corporation, association, or organization which extends protection not less favorably and effectively than that provided by this Act.

[Sec. 11. ~~DUTIES AND POWERS OF THE COMMISSIONER.~~ In addition to the duties and powers enumerated elsewhere in this Act;

(1) The commissioner shall:

[(a) notify the board of directors of the existence of an insolvent or an impaired insurer not later than three days after a determination of impairment is made or after receipt of notice of impairment, whichever is earlier. The commissioner shall within three days notify the association of a member insurer placed under supervision pursuant to Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code);

[(b) upon request of the board of directors provide the association with a statement of the premiums for each member insurer.

[(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture upon any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any forfeiture paid under this section shall be paid by the member insurer to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state;

[(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to appeal to the State Board of Insurance and to judicial review as provided in Sections (d) and (f), Article 1.04, Insurance Code, as amended.

[Sec. 12. ~~PREVENTION OF INSOLVENCIES AND IMPAIRMENTS; ADMINISTRATION OF ESTATES.~~ To aid in the detection and prevention of insurer insolvencies and impairments and in the administration of receivership and conservatorship estates:

[(1) The board of directors shall notify the commissioner of any information indicating any member or unauthorized insurer or nonmember of the association may be unable or potentially unable to fulfill its contracts, policies, or contractual obligations and may request appropriate investigation and action by the commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate. In carrying out its duties under this Act, upon written request by the commissioner, the board of directors shall authorize expenditure of funds from the administrative account for reasonable and necessary administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in those instances in which the commissioner has notified the board of directors or the board of directors has otherwise become aware that:

[(A) the nonmember of the association or unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the nonmember of the association or unauthorized insurer;

~~[(B) insufficient funds are available from abandoned funds as provided by Section 8, Article 21.28, of this code; and~~

~~[(C) insufficient funds are available to the State Board of Insurance from appropriations for use in meeting the administrative expenses.~~

~~[Funds spent by the association pursuant to this subsection do not become assets of the nonmember of the association or unauthorized insurer but are a special fund loaned to the receiver or the conservator for payment of administrative expenses, which loan shall be repayable to the extent available from the funds of such nonmember of the association or unauthorized insurer.~~

~~[(2) The board of directors shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. The board of directors shall notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or an insurer the commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.~~

~~[The board of directors shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator or conservator appointed by the commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.~~

~~[(3) The board of directors may make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation or individual recommendation by the board of directors or members to the commissioner, liquidator or conservator.~~

~~[(4) The board of directors may make recommendations to the commissioner for the detection and prevention of member insurer impairments.~~

~~[(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this Act or exercised any of its powers under this Act, prepare a report on the history and causes~~

of such impairment, based on the information available to the association, and submit a report on same to the commissioner.

[(6) Any insurer that has an officer, director or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

[(7) The association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

[Sec. 13. MISCELLANEOUS PROVISIONS. (1) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under Section 8. Records of all such negotiations or meetings shall be made public only upon the termination of a receivership, liquidation, rehabilitation, conservatorship proceeding involving the insolvent insurer or impaired insurer, or upon the order of a court of competent jurisdiction. Nothing in this paragraph shall limit the duty of the association to render a report of its activities under Section 14.

[(2) For the purpose of carrying out its obligations under this Act, the association shall be deemed to be a creditor of the insolvent insurer or impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Paragraph (6) of Section 8.

[(3) No distribution to stockholders, if any, of an insolvent or impaired insurer shall be made until and unless the total amount of assessments levied by the commissioner with respect to such insurer has been fully recovered by the association.

[(4) The use in any manner of the protection afforded by this Act by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Texas Insurance Code, as amended, and shall be subject to the provisions thereof.

[(5)(a) If an order for receivership, liquidation, rehabilitation, or conservatorship of a member insurer has been entered, the receiver appointed under such order shall have the right to recover on behalf of such insurer from any affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it the amount of distributions, other than stock dividends paid by such insurer on its capital stock, at any time during the five years preceding the petition for receivership, liquidation, rehabilitation, or conservatorship, subject to the limitations of Subparagraphs (b) to (d), below:

[(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

[(c) Any person who was an affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.

[(d) The maximum amount recoverable under this paragraph shall be the amount needed in excess of all other available assets of the insolvent insurer or impaired insurer to pay the contractual obligations of such insurer.

~~[(e) If any person liable under Subparagraph (c) is insolvent, all its affiliates as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code):~~

~~[(f) Claims against an impaired insurer placed under an order of liquidation, rehabilitation, or conservation shall be processed and acted on by the receiver in the same manner as other claims under Article 21.28 of this code:~~

~~[(g) A person who has a claim against an insurer under a provision in an insurance policy, other than a policy of an impaired insurer, that also is a contractual obligation under this Act must first exhaust his right under that policy. The amount of an approved claim under this Act shall be reduced by the policy limits of or amount paid under that insurance policy, whichever amount is greater. If a claimant exhausts his right under a policy other than a policy of an impaired insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the impaired insurer to recover an amount paid the claimant under that policy. Notwithstanding the foregoing, a person having a contractual obligation as defined by this Act under a life insurance policy or annuity contract issued by an impaired insurer is not required to exhaust other coverage for that claim; and the amount of an approved claim under a life insurance policy or annuity contract issued by an impaired insurer may not be reduced because of that duplicate coverage:~~

~~[Sec. 14. EXAMINATION OF THE ASSOCIATION; ANNUAL REPORT. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.~~

~~[Sec. 15. TAX EXEMPTIONS. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.~~

~~[Sec. 16. IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents, or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken or not taken by them in the performance of their powers and duties under this Act.~~

~~[Sec. 17. CONTINUING TO WRITE INSURANCE POLICIES. Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued or renewed after the effective date of and while an impaired insurer is subject to an order by the commissioner of insurance placing an impaired insurer in conservatorship unless the commissioner, in his order appointing the conservator, directs the conservator to continue the issuance or renewal of insurance policies, under such terms and conditions as the commissioner may prescribe. The commissioner shall furnish a copy of such order to the board of directors of the association. In the event that the commissioner, in his original order appointing the conservator, directs the conservator to continue the issuance or renewal of insurance policies in the impaired insurer, companies subject to the provisions of this Act shall not be liable for assessments for claims arising from insurance policies issued or renewed more than 90 days after the date of the commissioner's order appointing the conservator unless the commissioner, prior to the expiration of such 90-day period, determines, after public hearing, that it is in the best interests of the policyholders of the~~

impaired insurer or in the public interest for the impaired insurer to continue the issuance or renewal of insurance policies. At least 10 days notice of such hearing shall be given to the board of directors of the association. The board of directors shall have the right to appear at and participate in the hearing. The conservator or his representative shall appear at such hearing and present evidence why it would be in the best interest of the policyholders of the impaired insurer to continue the issuance or renewal of policies. Nothing in this section limits the liability of companies subject to this Act for assessments for claims presented after an impaired insurer is placed in receivership.

~~[Sec. 18. —RELEASE FROM CONSERVATORSHIP OR RECEIVERSHIP. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the amount of Class B assessments paid to the association to carry out the duties of the association under Section 8 in relation to such insurer the amount paid; provided, however, the commissioner may, upon application of the board of directors of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.]~~

~~[Sec. 19. —TAX WRITE-OFFS OF CERTIFICATE OF CONTRIBUTION. (1) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner pursuant to Section 9, Paragraph (7), at percentages of the original face amount approved by the commissioner, for calendar years as follows:~~

~~[100 percent for the calendar year of issuance, which shall be reduced 10 percent a year for each year thereafter for a period of 10 years;~~

~~[(2) The insurer may offset the amount written off by it in a calendar year under Paragraph (1), above, against its premium tax liability to this state accrued with respect to business transacted in such year. Provided, however, an insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within such year.]~~

~~[(3) Any sums acquired by refund, pursuant to Paragraph (6) of Section 9, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in Paragraph (2), above, and are not then needed for purposes of this Act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.]~~

~~[Sec. 20. —RULES AND REGULATIONS. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.]~~

~~[Sec. 20A. —CONFLICTS OF LAW. In the event of conflict between this Act and other law relating to the subject matter of this Act or its application, this Act controls, except that Articles 21.28 and 21.28-A of this code always prevail over this Act.]~~

SECTION 1.22. Section 4A, Article 21.28-A, Insurance Code, is amended by adding Subsection (e) to read as follows:

(c) This section does not apply to:

(1) any life, accident, or health insurance policy or contract delivered or issued for delivery by an insurer that is subject to any provision of Chapter 3, 11, 14, or 22 of this code;

(2) any contract or certificate that is delivered or issued for delivery by a group hospital service corporation organized under Chapter 20 of this code;  
or

(3) any contract or evidence of coverage delivered or issued for delivery by a health maintenance organization operating under a certificate of authority issued under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

SECTION 1.23. Section 11(b), Article 21.54, Insurance Code, is amended to read as follows:

(b) No claim against a purchasing group or its members shall be entitled to payment from any insurance insolvency guaranty fund or similar mechanism in this state, nor shall a purchasing group or its members or claimants against the group or its members receive any benefit from such fund for claims arising under the insurance policies procured through the purchasing group unless the policies are underwritten by insurance companies that are licensed in this state and have capital and surplus of at least \$25 million at the time of policy issuance.

SECTION 1.24. Section 404.102(a), Government Code, is amended to read as follows:

(a) The treasurer may incorporate a special-purpose trust company called the Texas Treasury Safekeeping Trust Company. The purposes of the trust company are to provide a means for the treasurer to obtain direct access to services provided by the Federal Reserve System and to enable the treasurer to manage, disburse, transfer, safekeep, and invest [public] funds and securities more efficiently and economically. The treasurer may deposit [public] funds and securities with the trust company to achieve its purpose.

SECTION 1.25. Section 404.103(a), Government Code, is amended to read as follows:

(a) The trust company may receive, transfer, and disburse money and securities as provided by statute or belonging to the state, agencies and local political subdivisions of the state, and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state in a manner that qualifies the trust company as a "depository institution" as defined by Section 19, Federal Reserve Act (12 U.S.C. Section 461).

SECTION 1.26. (a) Except as provided by Subsection (b) of this section, this article takes effect January 1, 1992, and applies only to liquidation proceedings initiated against an insurer or agent declared insolvent or impaired on or after that date and to assessments made in relation to those proceedings, and a proceeding initiated against an insurer or agent that is declared insolvent or impaired before that date is governed by the law in effect on the date that the declaration was made and the former law is continued in effect for that purpose.

(b) A guaranty association established under Article 9.48, 21.28-C, or 21.28-D, Insurance Code, may elect to assume control of liquidation proceedings initiated before January 1, 1992. A proceeding covered by such an election is subject to Article 9.48, 21.28-C, or 21.28-D, as appropriate, as amended by this article. On and after January 1, 1994, the appropriate guaranty association shall assume control over any proceeding outstanding on that date that was initiated under Article 9.48, 21.28-C, or 21.28-D, Insurance Code, as those articles existed before amendment by this article.

The amendment was read.

Senator Harris of Dallas offered the following amendment to Floor Amendment No. 4:

**Floor Amendment No. 5**

Amend Floor Amendment No. 4 to C.S.H.B. 6 as follows:

(1) Amend Section 9(c), Article 21.28, Insurance Code, (page 6, line 9), by inserting the following after “applicable thereto.”: Instead of the winding up and distribution of a receivership estate of an insurer without capital stock, the court shall order revival and reinstatement of the charter, permits, licenses, franchises, and management contracts or other control instruments of the insurer if the insurer's remaining cash on hand and on deposit, less any outstanding valid and enforceable liabilities, exceeds the minimum amount of capital and surplus prescribed for that insurer under Article 2.02 or Section 1 of Article 3.02 of this code.

(2) Strike Section 5(9)(B), Article 21.28-C, Insurance Code, as added by Amendment No. 4 (page 28, lines 5-7), and substitute:

(B) a member insurer placed in conservatorship after it has been determined by the commissioner to be insolvent and that has been designated an impaired insurer by the receiver.

(3) Amend Section 5(11), Article 21.28-C, Insurance Code, as added by Amendment No. 4 (page 28, line 17), by striking “credit” and substituting “credited”.

(3A) Strike Section 8(a), Article 21.28-C, Insurance Code, as added by Amendment No. 4 (page 30, lines 8-16), and substitute the following:

(a) The association shall pay covered claims that exist before the designation of impairment or arising within 30 days after the designation of impairment, before the policy expiration date if less than 30 days after the designation of impairment, or before the insured replaces the policy or causes its cancellation if the insured does so not later than the 30th day after the date of the designation. The obligation is satisfied by paying to the claimant the full amount of a covered claim for benefits.

(4) Amend Section 10(a), Article 21.28-C, Insurance Code, as added by Amendment No. 4 (page 36, line 2), by striking “receives” and substituting “gives”.

(5) Amend Section 5(1), Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 79, line 22), by striking “either of the two accounts” and substituting “the four accounts”.

(6) Amend Section 6(a), Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 83, lines 20-27 and page 84, lines 1-3), by striking the last sentence of the subsection and substituting the following: For purposes of administration and assessment, the association shall maintain four accounts:

(1) the accident, health, and hospital services account;

(2) the life insurance account;

(3) the annuity account; and

(4) the administrative account.”

(7) Amend Section 9(g), Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 96, line 8) by striking “this subsection” and substituting “this section”.

(8) Amend Section 9, Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 97, between lines 25-26), by inserting Subsection (n) to read as follows:

(n) All assessments collected by the association may be deposited into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The funds deposited shall be accounted for separately from all other funds by the state treasurer to the association.



(9) Amend Section 13(a), Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 103, line 16), by striking "Section 9(a) of this Act" and substituting "Section 9(k) of this Act".

(10) Amend Section 19(a), Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 109, line 7) by inserting the following at the end of the last sentence of the subsection: "The use of the protection afforded by this Act, other than as provided by this section, by any person in the sale of insurance constitutes unfair competition and unfair practices under Article 21.21 of this code, and is subject to the sanctions imposed under that article."

(11) Amend Section 19(b), Article 21.28-D, Insurance Code, as added by Amendment No. 4 (page 109, lines 11-16), by striking "Except as provided by Subsection (d) of this section, an insurer may not deliver a policy or contract described in Section 3 of this Act to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract." and substituting "Unless Subsection (d) of this section applies, at the expiration of the 60th day after the date on which the commissioner approves the document, an insurer may not deliver a policy or contract described in Section 3 of this Act to a policy or contract holder unless the summary document is delivered to the policy or contract holder before or at the time of delivery of the policy or contract."

(12) In Section 1.26(a) of Article 1 of the bill, as added by Amendment No. 4, following "Except as provided by Subsection (b)" (page 143, line 27), insert "or (c)".

(13) In Section 1.26 of Article 1 of the bill, as added by Amendment No. 4, (page 144, line 18), add Subsection (c) to read as follows:

(c) Section 1.05 of this article takes effect January 1, 1992, and applies to liquidations proceedings initiated against an insurer or agent declared insolvent or impaired before, on, or after that date.

(14) Strike Section 1.19 of Amendment No. 4 (page 24, lines 5-6), and substitute the following:

SECTION 1.19. Section 11, Article 9.48, Insurance Code, is amended to read as follows:

#### Approval of covered claims

Sec. 11. Funds [~~Covered claims against an impaired insurer or agent placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds~~] received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claims [~~approved by the receiver~~] and the amount of the assets marshalled by the receiver for payment to holders of covered claims. ~~In[; and provided further that in] ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims [approved by the ancillary receiver] and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state.~~

If a conservator is appointed to handle the affairs of an impaired insurer or agent, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer or agent. If the records of the impaired insurer or agent do not reflect the address of

a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer or agent has been placed in conservatorship, the funds received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be unliquidated or undetermined, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the association [receiver or conservator] by the holder of a covered claim or the acceptance of the benefits of contracts [negotiated] by the court [receiver] or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the association [impaired insurer or agent] of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the association [impaired insurer or agent] may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

The amendment to the amendment was read and was adopted by a viva voce vote.

#### RECORD OF VOTE

Senator Barrientos asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 5.

Question recurring on the adoption of Floor Amendment No. 4 as amended, the amendment as amended was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator Barrientos asked to be recorded as voting "Nay" on the adoption of Floor Amendment No. 4 as amended.

Senator Harris of Dallas offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend C.S.H.B. 6 on page 23, lines 69 and 70 by striking "February 1, 1992" and inserting in lieu thereof "September 1, 1991".

The amendment was read and was adopted by a viva voce vote.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend C.S.H.B. 6 by deleting ARTICLE 16 in its entirety and renumbering the remaining sections appropriately.

The amendment was read and was adopted by a viva voce vote.

**RECORD OF VOTE**

Senator Sims asked to be recorded as voting "Nay" on the adoption of the amendment.

Senator Parker offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend C.S.H.B. 6 as follows:

Add SECTION 8.23 to Article 8 of the bill to read as follows (Committee Printing, page 17 between lines 36 and 37):

SECTION 8.23. The changes made by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, to the application of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and to the participation of State Board of Insurance staff members in rate proceedings apply to proceedings before the State Board of Insurance commenced on or after October 1, 1991.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Harris of Dallas and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 6 ON THIRD READING**

Senator Harris of Dallas moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.H.B. 6 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Ellis, Glasgow, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Dickson, Green, Lyon.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

**SENATE RULE 11.11 SUSPENDED**

On motion of Senator Montford and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Finance might consider **H.B. 1** today.

**SENATE RULE 11.11 SUSPENDED**

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider the following bills today:

**H.B. 169**

**S.B. 80**

**PERMISSION TO MEET GRANTED**

On motion of Senator Brooks and by unanimous consent, Standing Committees and Conference Committees were granted permission to meet while the Senate was in session.

**RECESS**

On motion of Senator Brooks, the Senate at 12:55 p.m. took recess until 5:00 p.m. today.

**AFTER RECESS**

The Senate met at 5:00 p.m. and was called to order by Senator Brooks.

**REPORTS OF STANDING COMMITTEES**

By unanimous consent, Senator Montford submitted the following report for the Committee on Finance:

**C.S.H.B. 158**

**C.S.S.J.R. 3**

By unanimous consent, Senator Haley submitted the following report for the Committee on Administration:

**S.B. 79**

**H.B. 169**

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was filed with the Secretary of the Senate:

Austin, Texas  
August 5, 1991

**P R O C L A M A T I O N  
BY THE  
GOVERNOR OF THE STATE OF TEXAS**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

TO THE MEMBERS OF THE SENATE AND THE HOUSE OF  
REPRESENTATIVES OF THE SEVENTY-SECOND TEXAS LEGISLATURE  
IN FIRST CALLED SESSION:

Pursuant to Article III, Section 40 and Article IV, Section 8 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby submit the following matter for consideration by the Seventy-second Texas Legislature in its First Called Session:

Legislation providing for the raising of revenue for the operation of state government.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 5th day of August, 1991.

/s/Ann W. Richards  
Governor of Texas

Attest:

/s/John Hannah, Jr.  
Secretary of State

#### MEMORIAL RESOLUTIONS

**H.C.R. 30** - (Leedom): In memory of Mariano Martinez, Sr.

**S.R. 153** - By Bivins: In memory of civic leader Charles A. Wolflin of Amarillo.

**S.R. 162** - By Sims: In memory of Yeager G. Grimes of San Angelo.

**S.R. 167** - By Montford: In memory of Henry Norris of Lamesa.

**S.R. 168** - By Barrientos: In memory of Dr. Connie R. Yerwood Conner of Austin.

#### CONGRATULATORY RESOLUTIONS

**H.C.R. 12** - (Barrientos): Commending Eric Johnson for his achievements and extending to him best wishes for continued success in the future.

**H.C.R. 21** - (Krier): Commending James R. Vasquez on his contributions to the field of public education.

**S.R. 146** - By Turner: Extending congratulations to Mr. and Mrs. Marshall Harding on the occasion of their 54th wedding anniversary.

**S.R. 147** - By Turner: Extending congratulations to Mr. and Mrs. N. C. Meyer of Midway on the occasion of their 50th wedding anniversary.

**S.R. 148** - By Turner: Honoring Mary Minks of Eagle Lake on the occasion of her 100th birthday.

**S.R. 149** - By Turner: Extending congratulations to Mr. and Mrs. Lamar B. Piboin of Madisonville on the occasion of their 50th wedding anniversary.

**S.R. 150** - By Turner: Honoring Mr. John Samuel Morris of El Campo on the occasion of his 100th birthday.

**S.R. 151** - By Ellis: Extending congratulations to Lynette T. Fornerette on her recent appointment to the Texas Appraiser Licensing and Certification Board.

**S.R. 152** - By Barrientos: Recognizing Dr. Harlan Smith who was recently selected to receive NASA's Distinguished Public Service Medal.

**S.R. 154** - By Bivins: Extending congratulations to Tommy "Spanky" Assiter of Amarillo who was recently named the new international champion auctioneer at the National Auctioneers Association contest.

**S.R. 155** - By Carriker: Recognizing Trooper Charlie O'Neal of Corsicana on the occasion of his retirement after 40 years of distinguished service with the Department of Public Safety.

**S.R. 156** - By Ratliff: Extending appreciation and admiration to the exemplary members of the Woodland 4-H Club for a job well done.

**S.R. 157** - By Turner: Recognizing the First Baptist Church of Grapeland on the occasion of its 100th anniversary.

**S.R. 160** - By Sims: Honoring Mrs. Paula G. Valdez on the occasion of her 95th birthday.

**S.R. 161** - By Sims: Extending congratulations to Mr. and Mrs. Gene Coleman of San Angelo on the occasion of their 50th wedding anniversary.

**S.R. 163** - By Sims: Extending congratulations to Dr. and Mrs. Stanley W. Bohmfalk of Fredericksburg on the occasion of their 50th wedding anniversary.

**S.R. 164** - By Sims: Extending congratulations to Ward County Clerk Pat Finley who was recently named Texas "County Clerk of the Year" by the County and District Clerks Association.

**S.R. 165** - By Sims: Extending congratulations to Mr. and Mrs. Warren Lee on the occasion of their 50th wedding anniversary.

**S.R. 166** - By Sims: Extending congratulations to Ensign Frank Mitchell Bradley of Eldorado as he embarks on his new assignments in the United States Navy.

**S.R. 169** - By Barrientos: Extending congratulations to Schlotzsky's Sandwich Shops on the occasion of their 20th anniversary.

**S.R. 170** - By Green: Extending congratulations to Bryan Patrick Williams on achieving the rank of Eagle Scout.

#### ADJOURNMENT

On motion of Senator Green, the Senate at 5:10 p.m. adjourned until 11:30 a.m. tomorrow.

#### APPENDIX

Sent to Governor  
(August 5, 1991)

**S.C.R. 4**

**S.C.R. 5**

**S.C.R. 7**

**S.C.R. 9**